TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 224

WILLIAM O'HARA AND SVEN TJERSLAND, PETITIONERS,

vs.

LUCKENBACH STEAMSHIP COMPANY

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 12, 1924

CERTIORARI GRANTED JANUARY 12, 1925

(30,737)

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INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 27, 1925

In the Southern Division of the District Court of the United States, in and for the Northern District of California, Third Division.

IN ADMIRALTY.

WILLIAM O'HARA and SVEN TJERSLAND,
Libelants,

vs.

LUCKENBACH STEAMSHIP COMPANY,
Defendants.

(PRAECIPE FOR APOSTLES ON APPEAL.)

To the Clerk of the Above-entitled Court:

Please prepare as apostles on libelants' appeal in the above cause, a record consisting of the following papers therein:

1. The amended libel.
2. The exceptions to the amended libel.
3. The order overruling the exceptions to the amended libel.
4. The answer to the amended libel.
5. All the testimony and other proofs adduced in the cause.
6. The opinion of the court in said cause.
7. The final decree and notice of appeal.
8. The assignment of errors.
9. Any additional paper hereafter requested.

Yours, etc.,

H. W. HUTTON,
Proctor for Libelants.

Copy received this 15th day of January, 1924.
ANDROS & HENGSTLER,
F. W. DORR,
Proctors for Defendant.

[Endorsed]: Filed Jan. 15, 1924. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [1*]

[Title of Court and Cause.]

STATEMENT OF CLERK U. S. DISTRICT COURT.

PARTIES.

Libelants: WILLIAM O'HARA and SVEN TJERSLAND.

Respondent: LUCKENBACH STEAMSHIP COMPANY, a Corporation.

PROCTORS.

For Libelants and Appellants: H. W. HUTTON, Esq., San Francisco, Calif.

For Respondent and Appellee: ANDROS & HENGSTLER, San Francisco, Calif. [2]

PROCEEDINGS.

1922.

November 17. Filed libel for seamen's wages. Issued citation directed to Respondent, which was filed on return on November 23, 1922, with the

*Page-number appearing at foot of page of original certified Apostles of Appeal.

following return endorsed thereon:

"I have served this writ personally, by copy on Zach George, Ass't Manager, Luckenbach Steamship Co., 201 California St., San Francisco, Calif. this 23d day of November, A. D. 1922.

J. B. HOLOHAN,
U. S. Marshal.
By John E. Enright,
Deputy Marshal."

1923.

24. Filed exceptions to libel.

February 5. The exceptions to libel were confessed and libelants granted five days to amend their libel.

10. Filed amended libel.

15. Filed exceptions to amended libel.

April 2. This cause came on for hearing on the exceptions to amended libel before the Honorable John S. Partridge, District Judge, and was ordered submitted.

5. The Court ordered the exceptions to amended libel overruled.

16. Filed answer to amended libel.

December 5. This cause came on for hearing, before the Honorable Frank H. Rudkin, Judge. Argued and submitted.

Filed deposition of E. H. Head.

22. Ordered libel dismissed. Filed opinion.

1924.

January 7. Filed final decree.

15. Filed notice of appeal.
Filed assignment of errors.

February 16. Filed affidavit and order permitting libelants to prosecute appeal without payment of costs. [3]

[Title of Court and Cause.]

(AMENDED LIBEL.)

To the Honorable M. T. DOOLING, Judge of the Above-entitled Court.

The amended libel of William O'Hara and Sven Tjersland, *nor* of said district, filed by leave of the Court first had and obtained, against Luckenbach Steamship Company, a corporation, shipowner and ship operator, in a cause of wages civil and maritime, alleges as follows:

I.

That on all of the dates and times herein mentioned, defendant Luckenbach Steamship Company, was and now is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, and on all of said dates and times it was the owner and operator of a certain vessel flying the flag of and engaged in the merchant service

of the United States of America, named the "Lewis Luckenbach."

II.

That at the times hereinafter mentioned the said vessel "Lewis Luckenbach" was of more than one hundred tons gross burden and at said times made a voyage by sea from the port of New York in the State of New York to the port of San Francisco in the State of California, and said vessel during said times was not either a fishing or whaling vessel or a yacht, but on the contrary carried merchandise consigned to and shipped by private parties from said port of New York [4] to said port of San Francisco and said voyage was via way ports.

III.

That on the 30th day of September, 1922, at said port of New York libelants were each hired by the defendant to serve as seamen on said vessel "Lewis Luckenbach" on a voyage from said port of New York to Pacific ports of the United States and return to some port north of Cape Hatteras on the Atlantic Coast of the United States for final discharge, at the wages of $45.00 per month, and in pursuance of such hiring libelants each signed shipping articles for said voyage before the United States Shipping Commissioner for the port of New York, and proceeded on board of said vessel on said voyage hereinbefore mentioned voyage from said port of New York to said port of San Francisco being a part of the voyage for which libelants so signed shipping articles.

IV.

That each of the libelants were sailors on said vessel and there were eight other sailors on her on said voyage from said port of New York to said San Francisco.

V.

That said vessel called at the port of San Pedro in the State of California on her said voyage from said port of New York to said port of San Francisco, and that on said voyage from said port of New York to said San Pedro, which was by sea, the said ten sailors on said vessel were not equally divided into watches while at sea for the performance of ordinary work incident to the sailing and management of said vessel, on the contrary eight of such sailors were on one watch, and one on each of the other two watches, and neither the whole nor any part of the crew of said vessel during said times were needed for either the maneuvering of said vessel or the performance of work necessary for the safety of the cargo of said vessel or said vessel, or for the saving of [5] life aboard other vessels or for the performance of fire, life-boat or other drills, but on the contrary the whole of said sailors during said voyage were engaged in ordinary work incident to the sailing and management of said vessel.

VI.

That by reason of such failure to so divide the sailors on said vessel on said voyage in equal watches libelants each on the 15th day of November,

1922, demanded his discharge from said vessel of her master and the payment of the balance of wages then standing to the credit of each of said libelants respectively which said discharge was refused by both said master and said defendant upon whom demand as aforesaid was likewise made, whereupon libelants each left the service of said vessel.

VII.

That at said time libelant William O'Hara had earned the sum of $70.50 while in the service of said vessel on account of which he had received the sum of $43.00, but neither the whole nor any part of the remaining sum of $27.50 has been paid, and libelant Sven Tjersland had earned the sum of $69.00 on account of which he had received the sum of $40.00, but neither the whole nor any part of the remaining sum of $28.50 has been paid.

VIII.

That it was dangerous to operate the said "Lewis Luckenbach" as she was operated with but one sailor on a watch for two of the watches the same being of daily occurrence during said passage from said New York to said San Francisco, for the reason that at times it left said vessel with no lookout, the exact hours of which varied on each watch, and it is impossible to exactly define the particular hours when she had no lookout excepting that there was a period on each of the watches on which there was but one sailor on the whole passage from said New York to said San Pedro [6] when said

vessel was without a lookout by reason of the premised aforesaid.

IX.

That each of the libelants claim to be entitled to two days' pay for each of the days that have elapsed from the 15th day of November, 1922, to the date hereof and until their said balance of wages are paid by reason of the failure to pay said balance of wages when demanded as aforesaid.

X.

That all and singular the premised are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore libelants pray for judgment against said defendant for the balance of wages aforesaid and two days' pay for each of the days the same are not paid from the time when they should have been paid to when they are paid, and such other and further relief as the court is competent to give in the premises.

H. W. HUTTON,
Proctor for Libelant.

[Duly verified.] [7]

Copy received this 10th day of February, 1923.
ANDROS & HENGSTLER,
Proctors for Defendant.

[Endorsed]: Filed Feb. 10, 1923. W. B. Maling, Clerk. C. W. Calbreath, Deputy Clerk. [8]

[Title of Court and Cause.]

EXCEPTIONS TO AMENDED LIBEL.

To the Honorable, the Judges of the United States District Court, for the Northern District of California:

The exceptions of Luckenbach Steamship Company, Inc., defendant above named, to the amended libel herein, allege:

First. That said amended libel is insufficient in that it does not state facts sufficient to constitute a cause of amended libel against said defendant. It affirmatively appears from said amended libel that the crew was divided into at least two watches, as provided by Section 2, of the Act of March 4th, 1915. There is no requirement in said act for any specified number or proportion of the crew in each, or any, watch.

Second. That said amended libel does not state facts sufficient to constitute a legal excuse or justification for said libelants, or either of them, leaving said vessel prior to the termination of said voyage.

Third. It affirmatively appears from said amended libel that said libelants and each of them have forfeited all wages which may have been due at the times said libelants left the steamship "Lewis Luckenbach." [9]

WHEREFORE, said defendant prays that said libelants take nothing in this cause, that said amended libel may be dismissed and that defendant may recover its costs herein.

ANDROS & HENGSTLER,
Proctors for Defendant.

[Endorsed]: Due service and receipt of a copy of the within exceptions is hereby admitted this 15th day of Feb. 1923.

H. W. HUTTON,
Proctor for Libelant.

Filed Feb. 15, 1923. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [10]

At a stated term of the Southern Division of the United States District Court, for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, State of California, on Thursday, the fifth day of April, in the year of our Lord one thousand nine hundred and twenty-three. Present: The Honorable JOHN S. PARTRIDGE, Judge.

No. 17,709.

WILLIAM O'HARA et al.

vs.

LUCKENBACH STEAMSHIP COMPANY.

MINUTES OF COURT—APRIL 5, 1923—ORDER OVERRULING EXCEPTIONS TO AMENDED LIBEL.

Pursuant to oral opinion this day rendered, it is ordered that the exceptions to the amended libel, heretofore submitted, be and the same are hereby overruled with ten (10) days to respondent to answer. [11]

[Title of Court and Cause.]

ANSWER TO AMENDED LIBEL.

To the Honorable, the Judges of the United States District Court, in and for the Northern District of California:

The answer of Luckenbach Steamship Company, Inc., a corporation, to the amended libel herein, respectfully admits, denies and alleges as follows:

I.

Defendant admits the allegations of paragraph I of said amended libel.

II.

Defendant admits the allegations of paragraph II of said amended libel.

III.

Defendant admits the allegations of paragraph III of said amended libel.

IV.

Defendant admits the allegations of paragraph IV of said amended libel.

V.

Answering unto the allegations of paragraph V of said [12] libel, defendant admits that said vessel called at the port of San Pedro during said voyage; admits that on said voyage said ten sailors were not equally divided into watches, while at sea for the performance of ordinary or other work. In this connection defendant alleges that on said voyage said sailors were divided into three watches,

and that at no time during said watch were the libelants, or either of them, required to work or to be on duty more often than one watch out of three, and that it was a physical impossibility to have divided said ten sailors equally into three watches.

VI.

Answering unto the allegations of paragraph VI of said amended libel, defendant denies that the libelants, or either of them, on the 15th day of November, 1922, by reason of the alleged failure to divide the sailors on said vessel on said voyage into equal watches, or for any other reason, demanded their discharge, or either of their discharges from said vessel, or from the master thereof; denies that on said, or any day, for said alleged, or any reasons, libelants, or either of them, demanded payment of the balance of wages then due; denies that said discharge was refused by the master of said vessel; admits that said libelants left the service of said vessel.

In this connection defendant alleges, that on or about said date, the libelants wrongfully, and without cause, deserted the said vessel at the port of San Francisco.

VII.

Answering unto the allegations of paragraph VII of said amended libel, defendant admits that the libelants have received the amounts alleged in said paragraph; admits that neither of said libelants have been paid any additional sums; and in this connection [13] alleges that the balance due

said libelants at the port of San Francisco were forfeited by them by reason of this wrongful desertion from the said vessel, as hereinbefore set forth, and that there has not been at any time since said desertion, and is not now, any balance, or sum, or sums whatsoever due to said libelants, or either of them, from defendant.

VIII.

Answering unto the allegations of paragraph VIII of said amended libel, defendant denies that it was dangerous to operate the steamship "Lewis Luckenbach" as she was operated during said voyage; denies that said vessel was operated at any time during said voyage in a dangerous manner; denies that said vessel was operated at any time during said voyage, without a lookout.

In this connection defendant alleges that at all times during said voyage said vessel was navigated in a careful maner, with due regard to all laws, rules and regulations for the navigation of vessels at sea, and for the preventing of collisions.

IX.

Answering unto the allegations of paragraph IX of said amended libel, defendant denies that the libelants, or either of them, are entitled to two days' pay for one, or any other amount of pay, from the 15th day of November, 1922, or any other date, or at all.

X.

Answering unto the allegations in paragraph X of said amended libel, defendant denies that all and singular the premises are true, but admits that

they are within the jurisdiction of the United States and of this Honorable Court.

And for a further and first affirmative defense to said amended libel, defendant alleges: [14]

I.

That at all times in said amended libel mentioned, defendant was, and now is, operating a number of vessels, including the steamship "Lewis Luckenbach" in the intercoastal trade, between Atlantic Coast ports and Pacific Coast ports, via the Panama Canal.

II.

That during all of said times, it was, and now is, the practice of defendant to sign on crews for its vessels, including said steamship "Lewis Luckenbach," at the port of New York, or at other Atlantic Coast ports for round voyages to the Pacific Coast ports and return for discharge at an Atlantic Coast port north of Cape Hatteras.

III.

That during all of said time the prevailing wage for seamen, at said Atlantic Coast ports was, and is, the sum of $45.00 per month, or thereabouts. That all of the seamen signed on defendant's vessels at said Atlantic Coast ports, including the libelants, were signed on at said prevailing wage.

IV.

That at all of said times the prevailing wage for seamen on the Pacific Coast was, and is, much higher than on the Atlantic Coast, being $70.00, or thereabouts, in the coastwise lumber trade.

That as a result of said difference in wages the crews of defendant's ships, including the libelants herein, with the exception of the quartermasters and petty officers, have, during all of said times, always deserted from defendant's vessels, when said vessels reached the ports on the Pacific Coast.

V.

That the wholesale desertion by the crews of defendant's vessels at Pacific Coast ports, including the desertion by the [15] libelants herein, delayed the sailing of said vessels, and thereby caused defendant a large amount of expense and trouble in the hiring of new crews.

VI.

That the libelants herein, together with the other members of the crew of said steamship "Lewis Luckenbach," deserted from said vessel, because of the higher wages offered on the Pacific Coast, as hereinbefore set forth, and not because of any failure on the part of defendant, or of said vessel, to divide the watches on said vessel, or to keep a proper lookout on said vessel during said voyage.

And for a further and second affirmative defense to said amended libel, defendant alleges:

I.

That defendant is not required by the provisions of Section 2 of the Act of March 4, 1915, or by any other law to divide the watches on board its vessels so that there is an equal number of men in each watch.

II.

That defendant is not required by the provisions of said Act or by any other Act, to rotate the duties of the crew so that each member of the crew shall participate in the performance of all of the work on board. On the contrary, the master and officers of the vessel are obliged, for the safe and efficient navigation of said vessel, to designate the men from the crew who are best fitted to perform the respective duties required of them.

III.

That to require the defendant to divide the crew of said vessels equally, as contended by libelants, would seriously [16] hamper and interfere with the safe and efficient navigation of defendant's vessels, including said steamship "Lewis Luckenbach."

IV.

That to require the defendant to divide the crew of said vessel equally, as contended by libelants, would result in certain members of the crew being taken from watches where they had certain duties to perform, and placed in watches with no duty to perform.

WHEREFORE, defendant prays that the libelants take nothing by their amended libel, and that the same may be dismissed, and that defendant may recover its costs herein.

ANDROS & HENGSTLER,
Proctors for Defendant.

[Duly verified.] [17]

[Endorsed]: Receipt of a copy of the within answer is hereby admitted this 16th day of April, 1923.

H. W. HUTTON,
Proctor for Libelant.

Filed Apr. 16, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [18]

At a stated term of the Southern Division of the United States District Court, for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, State of California, on Wednesday, the fifth day of December, in the year of our Lord one thousand nine hundred and twenty-three. Present: The Honorable FRANK H. RUDKIN, Judge.

No. 17,709.

WILLIAM O'HARA and SVEN TJERSLAND
vs.
LUCKENBACH STEAMSHIP COMPANY.

MINUTES OF COURT—DECEMBER 5, 1923—HEARING.

This suit came on regularly this day for hearing. H. W. Hutton, Esq., appearing as proctor for libelants and F. W. Dorr, Esq., appearing as proctor for respondent. Sven Tjersland was duly sworn and testified on behalf of libelants, and libelants

rested. Respondent introduced and read in evidence the deposition of E. H. Read. George Davis was sworn and testified on behalf of respondent, and respondent rested. The evidence was thereupon closed. After arguments by the proctors for the respective parties, it was ordered that this suit be and the same is hereby submitted upon briefs to be filed in 5 days. [19]

[Title of Court and Cause.]

(TESTIMONY TAKEN IN OPEN COURT.)

Tuesday, December 4, 1923.

Counsel Appearing:

For the Libelant: H. W. HUTTON, Esq.

For the Respondent: ANDROS & HENGSTLER, Represented by F. W. DORR, Esq.

Mr. HUTTON.—This is an action for seaman's wages. The defendant claims a forfeiture by reason of alleged desertion. The amount demanded by O'Hara is $27.50. That is not disputed. The amount demanded by Tjursland is $28.50. That is not disputed. There do not seem to be any disputed facts. We are here to vindicate one of the laws of Congress.

The COURT.—What is the defense?

Mr. HUTTON.—The defense is desertion. The facts are these: These two men shipped as seamen on one of the Luckenbach vessels named in the libel at New York for a voyage to the West Coast and return. When they arrived in San Francisco

they demanded of the master that they be paid off for this reason: There is a law of Congress that requires the sailors on a ship shall [20] be divided into at least two watches. On this particular vessel, for the purpose of cleanliness, they divided three of the sailors into three watches and the others were kept in one watch. The law of Congress says that unless that law is obeyed a sailor has a right to demand his discharge at any time, which these men did. I do not think there is any dispute about that. On arrival here we claimed a discharge because there were ten sailors on the ship and they had three four hours on and eight ours off, and the other seven were on one watch.

The COURT.—If they were discharged here, what is your claim for wages?

Mr. HUTTON.—We demanded a discharge and that was refused, by reason of the failure to obey this law. The purpose of the law is to preserve safety so that in case of disaster there will be somebody on deck. We will show by one witness that during a period of the night, and during a period of all the times, in fact, there was a half hour in every four watches when there was no lookout on the ship.

Mr. DORR.—The amount involved is very small, but the point is very important to steamship companies. Our defense is that the law requires us not to divide the crew into equal watches, but that the provision of the law is that no man shall stand no more than one watch out of two. In this case there was one watch in three, that no man worked

more than eight hours out of twenty-four. That by reason of the difference in the prevailing wages on the Atlantic and the Pacific, the crews of the ships uniformly deserted when they reached a Pacific port. And that in this case they first demanded their unconditional discharge without any excuse, and then they demanded a certificate to go to the Marine Hospital on account of sickness, which was given [21] them, and they returned from the Marine Hospital, not being admitted, and then subsequently they demanded their discharge on this ground. That is substantially our defense. I might state that the question which is raised under this section of the statute is a new one.

The COURT.—The question depends entirely, then, on the construction of the statute?

Mr. DORR.—Absolutely. It was raised in this case by exceptions, but Judge Partridge did not pass upon that question. He said it would be reserved until the trial.

Mr. HUTTON.—The law says that these men shall be on watch successively. Of course, if a man is on watch eight hours and off sixteeen, he is not successive to anybody.

The COURT.—You agree on the facts, do you?

Mr. DORR.—Not as far as the ship being operated without a lookout, or that it was dangerous. We have the deposition of the captain on that point.

Mr. HUTTON.—The deposition of the captain says that the vessel was safe. Our contention is

that your Honor cannot consider that, because he cannot set his judgment up against the law of Congress.

TESTIMONY OF SWEN TJURSLAND, FOR LIBELANT.

SWEN TJURSLAND, called for the libelant.

Mr. HUTTON.—Q. You are one of the libelants in this action, that is, one of the men trying to get your wages? A. Yes.

Q. You were on the "Louis Luckenbach," were you not?

A. Yes. I demanded my discharge because of the watches.

Q. You were on the "Louis Luckenbach"?

A. Yes.

Q. You joined in New York and came around to San Francisco? A. Yes. [22]

Q. On the way out how were the men divided up?

A. They were divided into three watches, two men on each watch.

Q. What two men?

A. One quartermaster and one able seaman on each watch.

Q. How many sailors were there?

A. There were ten sailors.

Q. How many quartermasters? A. Three.

Q. That would be thirteen. You say they were divided up two on each watch? A. Yes.

Q. What two men were on each watch?

A. One quartermaster and one able seaman on each watch.

(Testimony of Swen Tjursland.)

Q. What became of the other seven men?

A. They were working day work, eight hours a day.

Q. Between what hours?

A. From eight o'clock in the morning until five at night.

Q. What were you?

A. I was a quartermaster.

Q. How long did you have to stay at the wheel?

A. I stayed three and one-half hours.

Q. Was there any break in that?

A. Yes, I had the wheel for two hours and then I go aft and I had relief.

Q. At night-time, who relieved you?

A. The man on the lookout.

Q. Was it the same way in the daytime?

A. Yes; any man who was working on deck in the daytime relieved me in the daytime.

Q. At night-time the man on the lookout relieved you? A. Yes.

Q. For how long? A. For half an hour.

Q. Was that the way the quartermaster was relieved all the way out, at night-time?

A. Yes; after twenty-four hours out from New York they started that—out from Philadelphia.

Q. How long did that keep up?

A. Until we got to San Pedro.

Q. When the lookout went to the wheel, and relieved the quartermaster, was there any lookout?

A. No, sir, no lookout. [23]

Q. How often did that happen?

(Testimony of Swen Tjursland.)

A. It happened from 10:00 to 10:30 at night, and from 2:00 to 2:30 in the morning—one hour every night.

Q. Where would the quartermaster go when he was relieved?

A. He was told to go down anywheres, down in his room and take a smoke.

Q. How many men did that leave on deck?

A. It leaves only one officer and the man at the wheel.

Q. Where were the rest of the men?

A. They were asleep.

Q. When you got to San Francisco, what did you say to the master?

A. I asked him to get paid off.

Q. How many times did you ask him?

A. About twice or three times.

Q. Was O'Hara with you at the time? A. Yes.

Q. He was on the ship, wasn't he? A. Yes.

Q. What did you say to the Captain when you went to get paid off?

A. I asked him to get paid off because the watches were not satisfactory.

Q. Did you take him any paper, any letter?

A. Yes.

Q. From whom? A. From Mr. Hutton.

Q. Did he pay you off then? A. No, sir.

Q. How many times did you ask him to get paid off? A. I believe about three times.

Q. And he never would pay you off?

A. No, sir.

(Testimony of Swen Tjursland.)

Q. So you quit? A. Yes, sir.

Q. And O'Hara quit, too? A. Yes, sir.

Q. Was he with you at all the times you asked to be paid off?

A. Not the first time, no.

Q. How many times was he with you when you asked the captain to pay you off?

A. Twice. [24]

Q. Did you ever go down to the company's office and ask to be paid off? A. Yes, sir.

Q. They didn't pay you off? A. No, sir.

Cross-examination.

Mr. DORR.—Q. In your quartermaster's watch, you were on for four hours, during which you actually stood watch for three and a half hours: Is that correct? A. Yes, sir.

Q. And then you were off watch eight hours?

A. Yes, sir.

Q. There were two other quartermasters?

A. I had to work one hour on my watch below, because I had half an hour off on each watch.

Q. There were two other quartermasters who rotated with you? A. Yes, sir.

Q. And then after being off eight hours, you came on again? A. Yes, sir.

Q. And stood three and a half hours out of your four hours?

A. Yes, but for that half hour that I was off I had to work on my watch below, so that I only had seven hours off.

(Testimony of Swen Tjursland.)

Q. In any event, when you were on watch, you only stood three and a half out of your four hours?

A. Yes, sir.

Q. And you stood a watch in three; that is correct, is it not—and two other quartermasters?

A. Yes.

Q. What was your objection to the watch?

A. That there was no man on the lookout while we were down below. There should be three men on watch.

Q. When did you find that out—when you got ashore?

A. I found it out twenty-four hours after we left Philadelphia.

Q. Didn't you first demand your discharge when you reached San Francisco upon other grounds?

A. Yes; I don't know as it was first. I was sick at the time— [25]

Mr. HUTTON.—Wait a moment. I don't think that is material. He might have had three or four reasons but that would make no difference if he had one reason that was legal.

The COURT.—I will let it go in for the purpose of making up the record.

Mr. DORR.—Just read the question to the witness.

(Question read by the reporter.)

A. Yes, I believe I did. I was sick at the time.

Q. O'Hara was not a quartermaster, was he?

A. Yes.

Q. He was also a quartermaster?

(Testimony of Swen Tjursland.)

A. Yes, on another watch.

Q. On another watch? A. Yes.

Q. And there was still a third quartermaster?

A. Yes.

Redirect Examination.

Mr. HUTTON.—Q. You say that the half hour that you got off for the relief, you had to put that in during the eight hours off? A. Yes.

Q. Was that every day? A. Every day.

Q. What kind of work did you do then?

A. Clean up the wheel-house, shine bars, wash the paint, clean the floor—the deck of the wheel-house.

Mr. HUTTON.—That is all. That is our case.

Mr. DORR.—If the Court please, in behalf of the respondent, the Luckenbach Steamship Company, I wish to offer in evidence the deposition of Captain E. H. Reed, of the steamship "Luckenbach." The deposition has just been filed.

Mr. HUTTON.—It was taken subject to legal objections. The captain gives his opinion as to the safety of the vessel operated as she was. Our contention is that he cannot set his judgment up against the laws of the United States. [26]

The COURT.—The deposition will be considered read.

TESTIMONY OF GEORGE DAVIDSON, FOR RESPONDENT.

GEORGE DAVIDSON, called for respondent, sworn.

Mr. DORR. Q. What is your position, Mr. Davidson? A. Superintendent.

Q. Of what?

A. The Luckenbach Steamship Company.

Q. Port superintendent? A. Yes.

Q. Were you so acting during the year 1922?

A. Yes.

Q. Are you familiar with the conditions existing in the San Francisco water front regarding the hiring and discharging of men? A. Yes.

Q. Are you familiar with the prevailing rates of wages as compared with the wages on Atlantic ports? A. Yes.

Mr. HUTTON.—I object to that as immaterial. If a man has a right to leave he has a right to leave, irrespective of what the wages are.

Mr. DORR.—I wish to show that by reason of the prevailing wage, the difference in the prevailing wages, that crews uniformly deserted when they reached San Francisco, and used all sorts of schemes to get off the ships.

The COURT.—I doubt the competency of that. It is what occurred in this particuler case. The others would afford very little evidence as to what these men did. The fact that men generally broke

(Testimony of George Davidson.)

their contract is no evidence that a particular individual did.

Mr. DORR.—But the difference in wages existed at this time—

The COURT.—It might show an inducement to a man to break his contract, but it would not tend to show that he did break it.

Mr. HUTTON.—The only excuse for that would be that these [27] gentlemen ought to pay the same wages in New York as they do on this side. The captain says he always filled up again, so what difference does it make?

The COURT.—You can put it in for the purpose of making up your record.

Mr. DORR.—Q. Was there any difference between the Atlantic and the Pacific Coast rates of wages? A. Yes.

Q. What was the difference?

A. On the East Coast $45, and on the West Coast between $70 and $90.

Q. What sort of work on the West Coast?

A. Lumber trade, steam schooners.

Q. What effect did that have on your crews reaching San Francisco?

Mr. HUTTON.—That is objected to as too general, and as immaterial.

The COURT.—I will admit it for the purpose of making up the record. I agree with you.

A. Mostly all sailors quit.

Mr. DORR.—Q. Did you have charge of supplying your ships with crews? A. The sailors, yes.

(Testimony of George Davidson.)

Mr. DORR.—I think I will not pursue that line any further. That is all.

Cross-examination.

Mr. HUTTON.—Q. What are the wages paid on the East Coast now? A. $55.

Q. What are the wages on this side?

A. I think $75.00.

Q. So they have gone up $10 over there and $5 over here?

A. They went up $10 over there, I don't know what they went here.

Mr. DORR.—That is our case.

The COURT.—Just file a reference to your authorities, Mr. Hutton. You may file one, Mr. Dorr. Do it within two or three days—say five days. [28]

[Endorsed]: Filed Jan. 15, 1924. Walter B. Maling, Clerk. C. W. Calbreath, Deputy Clerk. [29]

[Title of Court and Cause.]

(DEPOSITION OF E. H. READ, TAKEN ON BEHALF OF RESPONDENT.)

BE IT REMEMBERED: That on Thursday, November 22, 1923, pursuant to stipulation of counsel hereunto annexed, at the offices of Messrs. Andros & Hengstler, in the Kohl Building, in the city and county of San Francisco, State of California, personally appeared before me, Francis

Krull, a United States Commissioner for the Northern District of California, authorized to take acknowledgements of bail and affidavits, etc., E. H. Read, a witness called on behalf of the respondent.

H. W. Hutton, Esq., appeared as proctor for the libelants, and F. W. Dorr, Esquire, appeared as proctor for the respondent, and the said witness having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did hereupon depose and say as is hereinafter set forth.

(It is hereby stipulated and agreed by and between the proctors for the respective parties that the deposition of the above-named witness may be taken *de bene esse* on behalf of the respondent at the offices of Messrs. Andros & Hengstler, in the Kohl Building, in the city and county of San Francisco, State of California, on Thursday, November 22, 1923, before Francis Krull, a United States Commissioner for the Northern District [30] of California, and in shorthand by J. E. Boys.

(It is further stipulated that the deposition, when written up, may be read in evidence by either party on the trial or the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking said deposition, and that all objections as to materiality, relevancy and competency of the testimony are reserved to all parties.

(It is further stipulated that the reading over

(Deposition of E. H. Read.)

of the testimony to the witness and the signing thereof are hereby expressly waived.) [31]

E. H. READ, being called as a witness on behalf of the respondent, was first duly sworn by the Commissioner, to testify the truth, the whole truth and nothing but the truth, and did testify as follows:

Direct Examination by Mr. DORR.

Q. What is your name, Captain?

A. E. H. Read.

Mr. DORR.—The usual admiralty stipulation, Mr. Hutton?

Mr. HUTTON.—Yes.

Mr. DORR.—Q. You are the master of the steamship "Louis Luckenbach"? A. Yes, sir.

Q. How long have you been employed by the Luckenbach Steamship Company as master?

A. It will be 14 years the coming next February.

Q. Was the "Louis Luckenbach" on this coast on or about the 15th of November, 1922?

A. Yes, sir; she was,—about that time.

Q. The "Louis Luckenbach" was in the port of San Francisco at that time. A. Yes, sir.

Q. Are you familiar with the circumstances under which the libelants, William D. O'Hara and Sven Tjersland, left the employ of the steamship "Louis Luckenbach"? A. Yes, sir.

Q. Will you just state the circumstances?

A. On arrival here they asked to be paid off, and I refused to pay them off, because they had signed articles on for the round voyage,—signed on

(Deposition of E. H. Read.)

articles for the round voyage. Then they wanted, —I won't be positive whether both of them or one of them,—but I am positive one of them wanted a hospital certificate; and I gave it to him, or it was given to them. The officer gave it to them. After that they came back to the ship and demanded to be paid off, claiming I had violated a law of [32] 1915. Instead of looking the law up, I asked them what law it was; and they said "The law said I must put them in—divide my crew of sailors watch and watch"; and I said, "All right; I would not pay them off." One of them,—I don't know which one,—made the remark that, "The shipping commissioner will send for you." I said, "All right; I am right here." They went ashore again and came back later, with a letter to me. I am not sure that the letter was addressed to me, or to our office here, because the men had been to the office first, and the office had sent them to me with it. But the letter was from a lawyer, saying something to the effect that these men were entitled to their discharge; that I had violated the Rule of Section— naming the section—of the Law of 1915. I told them I would not pay them off; and that is the last I saw of them.

Q. Captain, where did these men sign on?

A. New York.

Q. And for what voyage did they sign on?

A. Signed for the voyage to Pacific Coast ports and back to the Atlantic Coast.

Q. North of Hatteras?

(Deposition of E. H. Read.)

A. I am not sure whether it stated "Back to New York," or "North of Hatteras"; but it was to the other coast.

Q. It was for the round voyage? A. Yes, sir.

Q. Do you remember the rates of their wages?

A. $40, I am pretty sure.

Q. $40 per month?

A. Per month; I think $40, for AB's and $30 for ordinary, at that time, we were paying.

Q. These men were AB's? A. I think so.

Q. Captain, during the voyage was any complaint made to you in regard to the standing of watches?

A. No, sir; no complaints whatever. [33]

Q. Was any complaint made to you about standing lookout watches, or failure to keep lookout watches? A. No, sir; there was not.

Q. Was there any time on that voyage, to your knowledge, when the lookout watch was not kept posted?

A. To my knowledge there was no time, from sunset to sunrise, when there wasn't a lookout kept on that ship.

Q. Do you know what rate of wages were being paid to sailors on the Pacific Coast at that time?

A. I only know from hearsay: They were paying $70 to $75 on the steam schooners and some of the oil tankers, and were paying a bonus to the men if they stayed for six months. I only know that from hearsay.

Q. Did you have any trouble in holding your crew?

(Deposition of E. H. Read.)

A. I never could hold them. They always, more or less of them, every trip, all the time, as soon as we got out here, wanted to be paid off. They came out as passengers, to get their passage out. If they could not get paid off,—if they could not get a certificate from a doctor of being incapacitated for duty, they drew half of the money they had coming to them and would quit,—leave. They had been doing that right along.

Q. I understand. And when these men demanded that they be paid off, claiming you had violated the law, they had previously demanded that they be paid off, without any excuse whatsoever?

A. Yes, sir; they asked to be paid off first thing of all; and I told them I would not pay them off. I am not positive whether both of them, but I am positive one of them wanted a certificate for the doctor,—wanted to see a doctor; and I think the both of them did.

Q. Did you give them the doctor's certificate?

A. They got the regular United States form of hospital certificate from the master. [34]

Q. And that permitted them to visit the Marine Hospital?

A. Yes, sir; the Marine Hospital doctor.

Q. And if anything had been the matter with them they would have been treated by the doctor there; would they?

A. Yes, sir; or if incapacitated from duty, the

(Deposition of E. H. Read.)

doctor always gives them a certificate back to the master of the ship that they are not fit for duty.

Q. After that, did either of them obtain such a certificate?

A. I don't know. They never brought it to me if they did.

Q. They never afterward asked their discharge on that ground?

A. No. The next ground was that I had violated this rule; and then they went to the Shipping Commissioner evidently; or threatened me with the Shipping Commissioner,—that he would send for me; but he did not. I don't know whether they went to him or not. If they did, he probably turned them down; and the next they came to was a letter from Mr. Hutton, I think; the letter was signed by Mr. Hutton, I think; I am not sure; but it was from a lawyer anyway.

Q. What sort of watches did these men stand on this voyage; how many hours on and how many hours off?

A. There was never any on more than 8 hours at a time; 8 hours a day. I don't know whether these men were in the day gang or in the watch—the watch gang. I stand watches on my ship, every man four on and four off—four on and eight off.

Q. Four off?

A. Four on and eight off; and the balance of the sailors, day men, from eight o'clock in the morning until five with one hour off for dinner.

(Deposition of E. H. Read.)

Q. How many hours out of the 24 do the day men stand? A. Eight. [35]

Q. Did any of your deck force stand more than 8 hours out of the 24?

A. No; unless in an emergency,—when you turn out all hands for something.

Q. I mean for ordinary ship's work?

A. No, sir.

Q. Did any of the men on this voyage stand more than one watch out of three?

A. I don't think they did. I don't remember whether all hands were called out for anything on that voyage or not.

Q. Outside of an emergency they didn't?

A. Outside of an emergency they did not.

Q. Captain, it is claimed in this case, that it is your duty under the law to divide your deck force equally into three watches, and to rotate the men successively among the various duties to be performed. How many men did you have in your deck force?

A. I had four mates—four officers; three quartermasters, bosun, and carpenter.

Q. And how many sailors?

A. Ten sailors; six AB's and four ordinaries.

Q. Aside from your officers and petty officers, your deck force would consist of ten men?

A. Ten men.

Q. If you were to divide your watch,—your deck force, rather,—into three equal watches, state what

(Deposition of E. H. Read.)

effect it would have upon the work to be done on board the ship?

A. You could not divide ten men into three equal watches.

Q. Assuming you could divide them as nearly into three equal watches as possible, what would be the result; what would be the effect on the work upon the ship?

A. We would have men on watch in the night-time who would not be doing anything. They would be standing four on and eight off anyhow; and of the four that would be on in the night-time some would not be doing anything, except sleeping and sitting around. It would shorten up the working crew on the ship. [36]

Q. How many details are there on the night watches to be filled?

A. Only the lookout, for the sailors; because the steering is done—taken care of by the quartermasters.

Q. So, if you had three or more men standing night watch on deck, there would be a number of them doing nothing? A. Yes, sir.

Q. Is that a fact? A. That is a fact.

Q. And being off watch for eight hours, during that time they can also do nothing? A. Yes, sir.

Q. What effect would it have upon the work of your vessel, if you were required to rotate the men successively through the various duties to be performed?

A. Well, it would have a very bad effect, because

(Deposition of E. H. Read.)

if I could not pick out men for certain jobs, and I had to rotate them, it might make me put a color-blind man on a lookout.

Q. Who details the men to the various positions?

A. The chief officer.

Q. And is it his practice to pick out the men best qualified for the various duties?

A. He picks out the men who are to stand watch and watch, and picks out the men who are for the day men, if that is what you mean.

Q. Yes; and by "watch and watch" you are speaking of a watch in three?

A. It is the watch in three; engine-room, deck and all, is watch and watch; except the men who are picked out for day men; and their work daily—work eight hours.

Q. They have 16 hours off?

A. They have all night off; they are on from 8 o'clock in the morning until 5 o'clock at night, except an hour for dinner; unless we have to turn all hands out, to take in an awning when it starts blowing, or something like [37] that.

Q. Emergency work? A. Emergency work.

Q. I want you to state, Captain, whether or not, any time during this voyage the "Louis Luckenbach" was operated or navigated in a manner which was dangerous, or without sufficient crew to fill the details?

A. She wasn't. I consider that she was operated at no time dangerously. She made her voyage, anyhow.

(Deposition of E. H. Read.)

Mr. DORR.—That is all.

Cross-examination.

(By Mr. HUTTON.)

Q. Captain, how many men did you have on the day watch? A. On this particular voyage?

Q. Yes.

A. Seven, from Balboa to San Pedro, seven.

Q. And how were the other three assigned?

A. One on each watch, four on and eight off; no steering to do.

Q. Then, after 5 o'clock at night, who would be on duty?

A. The man who was on watch from 4 to 8; the 4 to 8 watch man.

Q. Who else beside that?

A. That is the sailor who is on duty.

Q. Who else would be on duty?

A. The quartermaster at the wheel.

Q. Where is the wheel, aft or amidships?

A. Amidships,—on the bridge of the ship. Where else would it be? Yes,—it is aft in sailing vessels; but this is a large steamer, Mr. Hutton, and the wheel is on the bridge.

Q. There would be an officer on watch—would there? A. Yes, sir; I carried four officers.

Q. Where would he be; on the bridge?

A. On the bridge.

Q. Where would the sailor be?

A. Either in the bow or in the crow's-nest, after sunset. In the crow's-nest when it is [38] bad weather. If it is so bad you cannot keep them in

(Deposition of E. H. Read.)

the bow you put them in the crow's-nest which is on the foremast which is forward;—we have no mast; it is a king-post with a mast fixed across it. In fine weather he is kept in the bow of the ship.

Q. From 5 o'clock at night until the morning, all there would be on deck on actual duty would be an officer, a quartermaster and one sailor?

A. Yes; on that trip.

Q. By that do you mean on the way from New York to San Pedro?

A. No; from Balboa to San Pedro, I understand. I could not swear to it; I have only the officer's word for it.

Q. You spoke about your crew leaving here. You always had to get an equal number for the sailing of the ship, didn't you? A. Yes, sir.

Q. Did you sign them on here to go back to New York, to get paid off there?

A. No; generally I get some here to go to Portland or Seattle; fellows who want to go up the coast; and there would possibly get some more who wanted to come down this way; and sometimes a fellow who wants to go all the way down to New York. That is the way we have been operating now, for practically ever since the war—since we started running out of here after the war.

Q. Did you call at any Mexican ports? A. No.

Q. You came straight from Balboa to San Pedro?

A. Yes, sir; and it is mostly passengers we have, mostly, going both ways; men wanting to go down

(Deposition of E. H. Read.)

to the east coast, going back, and men wanting to come to the west coast coming out.

Q. You always carried a full crew?

A. Yes, sir; I have always been operating under the law. My effort has been to be within the law.

Q. When you left Balboa for the east coast you always were sure to have full crew of men?

A. Yes, sir. [39]

Q. No matter how many had left you?

A. Yes, sir.

Q. The principal thing for a sailor to do on the ship is to keep it clean?

A. Yes; clean the iron and paint.

Q. Who does your rigging?

A. There isn't much rigging to do on a steamship.

Q. Who keeps your ropes in order?

A. The bosun and sailors do that. You don't have any sailors now to splice a piece of wire—not one out of ten.

Q. Do you do that ashore in New York?

Q. Most of it is done ashore. Our cargo falls come on board with an eye already spliced in them; and sometimes it gives way, and they will splice an eye in the cargo fall on board the ship.

Q. The mate, he don't stand any watch?

A. No, the chief mate don't stand any watch.

Q. You had four mates—first, second, third and fourth?

A. Yes, sir; we have on two of the big ships, the "Andrea" and the "Louis."

(Deposition of E. H. Read.)

Q. How big is she?

A. Fourteen thousand four hundred dead weight.

Q. How far is it from the bridge to the fo'castle?

A. The bridge is possibly about the middle of her; I don't know whether it is just the middle. The ship is 527½ feet long—over all.

Q. How wide is she? A. 68.2.

Q. She was a big ship?

A. Yes, sir; she is a big ship.

Q. When are you going out?

A. To-morrow night, I believe.

Q. You are going to leave the port?

A. Yes; bound north, I think.

Q. In other words, you are bound on a voyage for the east? [40]

A. Yes, I go to Portland and Seattle and come back here and then go to Los Angeles or San Pedro; and then back east again; I am on my regular run.

Q. How long does it take you to make a trip?

A. According to my schedule I will make it in 59 days; last time I was 2 months and eight days.

Q. It depends on the weather and your detentions? A. Yes, sir.

Q. On the cargo?

A. Yes, sir; and on the amount of the cargo.

Q. That letter you got was from me?

A. I think it was; yes, sir. I think I remember the name "Hutton."

Q. You haven't got the letter with you, have you?

A. No; I have not. I don't know whether I have it filed with my papers or not.

Witness excused. [41]

[Endorsed]: Filed December 5, 1923. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [43]

At a stated term of the Southern Division of the United States District Court, for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, State of California, on Saturday, the twenty-second day of December, in the year of our Lord one thousand nine hundred and twenty-three. Present: The Honorable FRANK H. RUDKIN, Judge.

No. 17,709.

WILLIAM O'HARA et al.

vs.

LUCKENBACH S. S. COMPANY.

MINUTES OF COURT—DECEMBER 22, 1923—ORDER DISMISSING LIBEL.

This suit, heretofore tried and submitted, being now fully considered, and the Court having filed its memorandum opinion, it is ordered that the libel be and the same is hereby dismissed. [44]

[Title of Court and Cause.]

MEMORANDUM OPINION (AND ORDER DISMISSING LIBEL).

RUDKIN (Circuit Judge).—The libelants shipped as seamen for a voyage from the east to the west coast of the United States and return. Upon the arrival of the vessel at San Francisco they asked to be paid off without assigning any reason therefor. This demand was refused by the master for the reason that they had signed articles for the return voyage. A hospital certificate was then demanded by one or both libelants, and the certificate or certificates were furnished. Later the libelants returned to the ship and demanded that they be paid off and discharged for the reason that the master had violated the provisions of section 2 of Act of March 4, 1915 (38 Stat. 1164). That section provides that in all merchant vessels of the United States, with certain exceptions not material here, the sailors shall, while at sea, be divided into at least two watches, and that whenever the master of any vessel shall fail to comply with this requirement the seaman shall be entitled to discharge from such vessel and to recover his pay. The libelants contend that under this section there must be an equal division of the crew into the different watches. That [45] is, if the sailors are divided into two watches, one-half must be assigned to each watch; if into three watches, one-third to each watch, and so forth, as nearly as may be. If this is the proper construction

of the act, it is conceded that the master failed to comply therewith. But, in our opinion, the primary object of the section was to fix the hours of service and to prevent overwork, not to prescribe the number of seamen on each watch. If one-half or one-third of the crew must be assigned to duty at night, it is quite apparent that a majority of those thus assigned will have little or nothing to do. Of course, if such is the requirement of the law, the courts have nothing to say, but we fail to find anything in the statute calling for that construction. If Congress intended to thus limit the discretion of the master in the management of the vessel and the disposition of the crew it would have employed direct and specific language to that end. The libelants were, therefore, not entitled to their discharge, and the libel is dismissed.

[Endorsed]: Filed Dec. 22d, 1923. Walter B. Maling, Clerk. [46]

[Title of Court and Cause.]

FINAL DECREE.

This cause having come on regularly for trial, libelants above named appearing by their proctor, H. W. Hutton, Esq., and defendant appearing by its proctors, F. W. Dorr, Esq., and Andros & Hengstler, and testimony, oral and documentary, having been taken, and the cause having been heard on the pleadings and proofs, and having been argued and submitted by the proctors for the respective parties, and due deliberation having been had,

and the Court having been fully advised in the premises, and having rendered its opinion herein with findings as therein set forth, ordering that the libel be dismissed;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said libelants take nothing by their said libel, and that said libel be and it is hereby dismissed, and that defendant above named do have and recover from said libelants its costs of suit, to be hereinafter taxed.

Dated January 7th, 1924.

FRANK H. RUDKIN,
United States Circuit Judge. [47]

[Endorsed]: Receipt of a copy of the within final decree is hereby received this 28th day of Dec., 1923.

H. W. HUTTON,
Per C. S. WILLEY,
Proctor for Defendant.

Entered in Vol. 15, Judg. and Decrees, at page 242.

Filed Jan. 7, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [48]

[Title of Court and Cause.]

(NOTICE OF APPEAL.)

The defendant in the above cause and its proctors will please take notice:

That libelants above named and each thereof,

hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the decree given and made in the above cause by said District Court on the 7th day of January, 1924, and from each and every part of such decree.

H. W. HUTTON,
Proctor for Libelant.

Copy received this 15th day of January, 1924.

ANDROS & HENGSTLER,
F. W. DORR,
Proctors for Defendant.

[Endorsed]: Filed Jan. 15, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [49]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

1. The Court erred in finding and deciding that the primary object of Section 2, of the Act of Congress of date March 4th, 1914, commonly known as the Seamen's Bill, or LaFollette Act, was to fix the hours of service of seamen.

2. The Court erred in finding and deciding that the primary object of said Section 2 of said Act was to prevent overwork.

3. The Court erred in finding and deciding that the primary purpose of said Section 2 of said Act was not to prescribe the number of seamen that should be on each watch on a vessel.

4. The Court erred in concerning itself as to whether any seamen employed on vessel would have little or nothing to do at night or at any other time.

5. The Court erred in not finding and deciding that the following language in said Section 2 of said Act, "The sailors shall, while at sea, be divided into at least two, and the firemen, oilers, and water-tenders into at least three watches," compels such of sailors on a vessel into equal parts as near as they can be divided.

6. The Court erred in not finding and deciding that the intention of the Congress in passing said Section 2 of said Act, was to always have enough men on the deck of a vessel to make necessary provisions for safety in the event of a disaster. [50]

7. The Court erred in not finding and deciding that the requirement of dividing sailors into at least two watches on a vessel, is a safety requirement and for the protection of life at sea.

8. The Court erred in not finding and deciding that the language divided into at least two watches, compelled the dividing of the sailors on the "Lewis Luckenbach" into two or more equal parts.

9. The Court erred in finding that the libelants were not entitled to their discharge from the "Lewis Luckenbach" at the times mentioned in the amended libel herein, and in not finding and deciding that each was entitled to his discharge.

10. The Court erred in not ordering judgment for each of the libelants as prayed for in the amended libel herein.

11. The Court erred in dismissing libelants' libel herein, and dismissing said libel as to each of the libelants.

12. The Court erred in not finding and deciding, that, according to the general understanding of the English language, the meaning of the language divided in two or more watches, means an equal division as near as may be.

13. The Court erred in not finding and deciding that the term divide means an equal division as near as may be.

H. W. HUTTON,
Proctor for Libelants.

Copy received this 15th day of January, 1924.

ANDROS & HENGSTLER,
F. W. DORR,
Proctors for Defendant.

[Endorsed]: Filed Jan. 15, 1924. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [51]

[Title of Court and Cause.]

(AFFIDAVIT AND ORDER PERMITTING LIBELANTS TO PROSECUTE APPEAL WITHOUT PREPAYMENT OF COSTS.)

United States of America,
Northern District of California,—ss.

H. W. Hutton, being first duly sworn, deposes and says as follows:

I am the proctor for the libelants in the above

cause, and make this affidavit on their and each of their behalfs.

The libel herein was filed to recover seamen's wages, and there is no other demand of any kind therein.

The Act of The Congress of the United States of July 1st, 1918, United States Statutes at Large, page 40, reads:

> "That courts of the United States, including appellate courts, hereafter shall be open to seamen, without furnishing bonds or prepayment of or making deposit to secure fees or costs, for the purpose of entering and prosecuting suit or suits in their own name and for their own benefit for wages or salvage and to enforce laws made for their health and safety."

The libelants and each thereof are prosecuting the above suit for wages to an appeal and for their own benefit.

I therefore pray on their behalf that they may be allowed to prosecute an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, without furnishing bonds or prepayment of or making deposit to secure fees or costs. [52]

H. W. HUTTON.

Subscribed and sworn to before me this 16 day of February, 1924.

[Seal] C. W. CALBREATH,
Deputy Clerk U. S. District Court, Northern District of California.

On reading and filing the annexed affidavit of H. W. Hutton made on behalf of the libelants, and

good cause appearing therefrom, it is hereby ordered, that libelants be, and they are hereby, allowed to prosecute their appeal in the above cause without furnishing bonds or prepayment of or making deposit to secure fees or costs.

Dated February 16th, 1924.

[Seal] JOHN S. PARTRIDGE,
Judge.

[Endorsed]: Filed Feb. 16, 1924. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [53]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO APOSTLES ON APPEAL.

I, Walter B Maling, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 53 pages, numbered from 1 to 53, inclusive, contain a full, true and correct transcript of certain records and proceedings, in the case entitled William O'Hara et al. vs. Luckenbach Steamship Company, No. 17,709, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the praecipe for apostles on appeal (copy of which is embodied herein), and the instructions of the proctor for libelants and appellants herein.

I further certify that the cost for preparing and certifying the foregoing apostles on appeal is the sum of nineteen dollars and fifty-five cents ($19.55), but the same has not been paid to me owing to the

fact that libelants have secured an order permitting them to prosecute their appeal without payment of costs.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 27th day of February, A. D. 1924.

[Seal] WALTER B. MALING,
Clerk.
By C. M. Taylor,
Deputy Clerk. [54]

[Endorsed]: No. 4205. United States Circuit Court of Appeals for the Ninth Circuit. William O'Hara and Sven Tjersland, Appellants, vs. Luckenbach Steamship Company, a Corporation, Appellee. Apostles on Appeal. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, Third Division.

Filed February 27, 1924.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.
By Paul P. O'Brien,
Deputy Clerk.

In the Southern Division of the District Court of the United States in and for the Northern District of California, Third Division.

IN ADMIRALTY—No. 17,709.

WILLIAM O'HARA and SVEN TJERSLAND,
Libelants and Appellants,
vs.
LUCKENBACH STEAMSHIP COMPANY,
Defendant.

ORDER EXTENDING TIME THIRTY DAYS TO FILE APOSTLES ON APPEAL.

Good cause apearing therefor, it is hereby ordered that the libelants and appellants above named have and they are hereby given thirty days' additional time from and after the 14th day of February, 1924, in which to file their apostles on their appeal in the above cause, with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

And it appearing that said libelants and appellants inadvertently permitted the 30 days for the above purpose given by the rules of said Circuit Court of Appeals to lapse by one day without such filing of said apostles on appeal, it is ordered that this order be and the same is an order *nunc pro tunc* as of the 14th day of February, 1924.

Dated February 15th, 1924.

FRANK H. RUDKIN,
Judge.

[Endorsed]: No. 17,709. In the Southern Division of the United States District Court, Northern District of California, Third Division. In Admiralty. William O'Hara et al., Libelants and Appellants, vs. Luckenbach Steamship Company, Defendant and Appellee. Order Extending Time to File Apostles on Appeal. Filed Feb. 15, 1924. F. D. Monckton, Clerk. Refiled Feb. 28, 1924. F. D. Monckton, Clerk.

No. 4205. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Subdivision 1 of Rule 16 Enlarging Time to and Including ——, 192 —, to File Record and Docket Cause.

In the United States Circuit Court of Appeals for the Ninth Circuit.

WILLIAM O'HARA et al.,
Libelants and Appellants,
vs.
LUCKENBACH STEAMSHIP COMPANY,
Defendant and Appellee.

DESIGNATION OF PARTS OF RECORD TO BE PRINTED.

1. Print the whole of said record except as follows:

2. Print the title in the first paper, and in all others omit title and print (Title of Court and Cause) in lieu of title.

3. Omit printing verifications, but print in place thereof (Duly Verified).

4. Omit printing certificates to deposition.

5. Omit printing designation of apostles filed in lower court.

H. W. HUTTON,
Proctor for Appellant.

Copy received this 5th day of April, 1924.

ANDROS & HENGSTLER,
Proctors for Appellee.

[Endorsed]: No. 4205. In the United States Circuit Court of Appeals for the Ninth Circuit. William O'Hara et al., Appellants, vs. Luckenbach Steamship Company, Appellee. Designation of Parts of Record to be Printed. Filed Apr. 7, 1924. F. D. Monckton, Clerk.

No. 4205

United States

Circuit Court of Appeals

For the Ninth Circuit.

WILLIAM O'HARA and SVEN TJERSLAND,
Appellants,

vs.

LUCKENBACH STEAMSHIP COMPANY, a Corporation,
Appellee.

Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, Third Division.

PROCEEDINGS HAD IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

At a stated term, to wit, the October Term, A. D. 1923, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Wednesday, the 4th day of June, in the year of our Lord one thousand nine hundred and twenty-four. Present: the Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable WILLIAM H. HUNT, Circuit Judge; Honorable WILLIAM W. MORROW, Circuit Judge.

No. 4205.

WILLIAM O'HARA and SVEN TJERSLAND,
Appellants,

vs.

LUCKENBACH STEAMSHIP COMPANY, a Corporation,
Appellee.

ORDER OF SUBMISSION.

ORDERED above-entitled cause argued by Mr. H. W. Hutton, proctor for the appellants, and by Mr. Frederick W. Dorr, proctor for the appellee, and submitted to the Court for consideration and decision.

At a stated term, to wit, the October Term, A. D. 1924, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Monday, the 13th day of October, in the year of our Lord one thousand nine hundred and twenty-four. Present: the Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM H. HUNT, Circuit Judge.

No. 4205.

WILLIAM O'HARA and SVEN TJERSLAND,
Appellants,

vs.

LUCKENBACH STEAMSHIP COMPANY, a Corporation,
Appellee.

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF DECREE.

By direction of the Honorable William B. Gilbert, William H. Hunt and William W. Morrow, Circuit Judges, before whom the case was heard, ORDERED that the typewritten opinion this day rendered by this Court in the above-entitled case

be forthwith filed by the Clerk, and that a decree be filed and recorded in the minutes of this court, in accordance with the opinion filed therein.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 4205.

WILLIAM O'HARA and SVEN TJERSLAND,
Appellants,

vs.

LUCKENBACH STEAMSHIP COMPANY, a Corporation,
Appellee.

OPINION U. S. CIRCUIT COURT OF APPEALS.

Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, Third Division.

IN ADMIRALTY: Suit by libellants to recover from the Luckenbach Steamship Company an alleged balance of wages.

H. W. HUTTON, Proctor for Libellants.

LOUIS T. HENGSTLER, FREDERICK W. DORR, Proctors for Appellee.

Before GILBERT, HUNT and MORROW, Circuit Judges.

MORROW, Circuit Judge.—Appellants (libellants below) were quartermasters employed on September 30, 1922, on the steamship "Lewis Luckenbach" for a voyage from New York to the Pacific Coast ports and return to the Atlantic Coast at a wage of $45.00 a month.

Appellee (respondent below) is a corporation organized under the laws of Delaware, and is the owner of the steamship "Lewis Luckenbach."

The libellants, in their amended libel, seek to recover of the respondent certain sums for seamen's wages,—William O'Hara and the sum of $27.50 and Sven Tjersland the sum of $28.50. The defense is desertion.

The libellants shipped as seamen on the steamship "Lewis Luckenbach" for a voyage from the port of New York to Pacific ports of the United States and return to some port north of Cape Hatteras on the Atlantic Coast at the wages of $45.00 a month.

Upon the arrival of the vessel in San Francisco on November 15, 1922, libellants asked for a discharge without assigning any reason. The master refused to discharge them because they had signed articles for the return voyage. They then demanded a certificate to the U. S. Marine Hospital, which was given them, but they were unable to secure discharge on account of disability. Libellants then claimed discharge on the ground that the ship was violating the law in not dividing its crew into watches, and demanded payment of their wages. The discharge was again refused. They left the

service of the vessel and brought action to recover wages earned and double pay for each day having elapsed since November 15, 1922, when the wages were demanded.

Section 2 of the Act of March 4, 1915 (38 Stat. 1164) provides as follows:

> "That in all merchant vessels in the United States of more than one hundred tons gross, excepting those navigating rivers, harbors, bays, or sounds exclusively, the sailors shall, while at sea, be divided into at least two, and the firemen, oilers, and watertenders into at least three watches, which shall be kept on duty successively for the performance of ordinary work incident to the sailing and management of the vessel. * * *
>
> "Whenever the master of any vessel shall fail to comply with this section, the seamen shall be entitled to discharge from such vessel and to receive the wages earned. But this section shall not apply to fishing or whaling vessels, or yachts."

There were thirteen sailors on board the vessel, three of whom were assigned to duty as quartermasters and were divided into three watches. Three were assigned to the lookout in the nighttime and were also divided into three watches. The other seven did ordinary shipwork for eight hours during the day, and were off duty during the night.

Libellants, who were quartermasters, do not claim that they were on duty more than one watch out of every three, or that they were required to

work more than eight hours out of every twenty-four. The complaint of these two quartermasters, the libellants herein, is not that they have suffered any unequal treatment in the labor required of them, or that they were not on duty successively, but that other members of the crew did not stand the regular wheel or lookout watch; that they were on duty only eight hours during the daytime and off during the night. No complaint is made of unequal treatment by the other men who were not engaged in the actual sailing or management of the vessel, but were employed in painting and other ordinary shipwork during the day and were allowed off duty during the night. The complaint is that because these other men engaged in ordinary service were not divided into equal watches and required to do duty in watches at night, the two quartermasters claim they had the right to be discharged.

The Court below held that the primary object of the statute was to fix the hours of service and to prevent overwork, not to prescribe the number of seamen on each watch, and that the libellants were, therefore, not entitled to their discharge.

The duty of the quartermaster is to steer the ship, and obviously only one man at a time can be engaged in that duty. The addition of more men to a night watch would not relieve the quartermasters of their duties. They are selected for their qualification to steer the ship, and the safety of the ship often depends upon their qualification to perform that duty. The purpose of Congress was ob-

viously to provide for the safety of the ship in the selection of qualified quartermasters and men for the lookout, and also to prevent overwork. The division of the men into watches as disclosed by the evidence in this case was not contrary to the statute.

The decree of the District Court is affirmed.

[Endorsed]: Filed October 13, 1924. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 4205.

WILLIAM O'HARA and SVEN TJERSLAND,
Appellants,

vs.

LUCKENBACH STEAMSHIP COMPANY, a Corporation,
Appellee.

DECREE U. S. CIRCUIT COURT OF APPEALS.

Appeal from the Southern Division of the District Court of the United States for the Northern District of California, Third Division.

This cause came on to be heard on the transcript of the record from the Southern Division of the District Court of the United States for the Northern District of California, Third Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, affirmed, with costs in favor of the appellee and against the appellants.

It is further ordered, adjudged and decreed by this Court, that the appellee recover against the appellants for its costs herein expended, and have execution therefor.

[Endorsed]: Decree. Filed Oct. 13, 1924. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

At a stated term, to wit, the October Term, A. D. 1924, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Wednesday, the 12th day of November, in the year of our Lord one thousand nine hundred and twenty-four. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable WILLIAM H. HUNT, Circuit Judge; Honorable FRANK H. RUDKIN, Circuit Judge.

No. 4205.

WILLIAM O'HARA and SVEN TJERSLAND,
Appellants,

vs.

LUCKENBACH STEAMSHIP COMPANY, a Corporation,
Appellee.

ORDER STAYING MANDATE.

Upon oral motion of Mr. H. W. Hutton, proctor for the appellants, and good cause therefor appearing, IT IS ORDERED that the issuance of the mandate under Rule 32 of this Court in the above-entitled cause be, and hereby is stayed until the petition to be made on behalf of the appellants to the Supreme Court of the United States for the issuance of a writ of certiorari herein be disposed of, on condition that the said petition be docketed in the said Supreme Court within thirty (30) days from and after November 13, 1924.

United States Circuit Court of Appeals for the Ninth Circuit.

WILLIAM O'HARA and SVEN TJERSLAND, Appellants,

vs.

LUCKENBACH STEAMSHIP COMPANY, a Corporation, Appellee.

CERTIFICATE OF CLERK U. S. CIRCUIT COURT OF APPEALS TO RECORD CERTIFIED UNDER SECTION 3 OF RULE 37 OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing sixty-seven (67) pages, numbered from and including 1 to and including 67, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of proctor for the appellants, and certified under Section 3 of Rule 37 of the rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, in the

State of California, this 17th day of November, A. D. 1924.

[Seal]

F. D. MONCKTON,
Clerk.
By Paul P. O'Brien,
Deputy Clerk.

SUPREME COURT OF THE UNITED STATES

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit

ORDER GRANTING PETITION FOR CERTIORARI—Filed Jan. 12, 1925

On consideration of the petition for a writ of certiorari herein to the United States Circuit Court of Appeals for the Ninth Circuit, and of the argument of counsel thereupon had,

It is now here ordered by this Court that the said petition be, and the same is hereby, granted, the record already on file as an exhibit to the petition to stand as a return to the writ.

No.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1924

WILLIAM O'HARA and SVEN TJERSLAND,
Petitioners.

vs.

LUCKENBACH STEAMSHIP COMPANY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI.

To the Honorable William Howard Taft, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

William O'Hara and Sven Tjersland, petitioners, respectfully petition that a writ of certiorari issue out of and under the seal of this court, directed to the United States Circuit Court of Appeals for the Ninth Circuit, requiring it to certify to this court

its proceedings in the above cause for review and correction by this court, for the following reasons:

SUMMARY STATEMENT OF FACTS.

This action involves the construction of the following parts of Section 2 of the Act of March 4, 1915 (38 Stat. 1164), to-wit:

> "That in all merchant vessels of the United States of more than one hundred tons gross, excepting those navigating rivers, harbors, bays, or sounds exclusively, the sailors shall, while at sea, be divided into at least two, and the firemen, oilers and watertenders into at least three watches, which shall be kept on duty successively for the performance of ordinary work incident to the sailing and management of the vessel. * * * Whenever the master of any vessel shall fail to comply with this section, the seamen shall be entitled to discharge from such vessel and to receive the wages earned. But this section shall not apply to fishing or whaling vessels, or yachts."

And it appears herein that petitioners were hired by the defendant at New York in the State of New York, on September 30, 1922, to serve as seamen on the steamer "Lewis Luckenbach", a vessel of about 14,500 tons burden, and which was neither a fishing or whaling vessel or a yacht, for a voyage to Pacific Coast ports and return. Upon the arrival of the vessel in San Francisco, petitioners demanded their discharge, assigning more than one reason; one of the reasons however being that the

vessel had not been operated in accordance with the terms of the above statute, and it was conceded that it had not, as the sailors instead of being equally divided into watches to perform duty successively, were divided three to serve as quartermasters, three as night and day watchmen, all of whom did do duty successively; the other seven however were kept in one body, not divided into watches or at all, and did not do duty successively to the other sailors or to themselves, they being in one group, doing duty for eight hours during the daytime and being off 16 hours, a part of which was the night time, and asleep during a portion of that time; the demand of petitioners that they be discharged was denied, they left the vessel, were called deserters, sued herein for their wages, failed to recover, appealed and both courts held in substance that the above parts of the law was to prevent overwork. We respectfully submit, however, that whether the law was passed to promote safety of life at sea, or passed to prevent overwork, or whatever the reason of its passage, the statutory requirement that the sailors shall be divided, which of course means *equally* divided into watches, and shall perform duty successively to each other, is still present. Paragraph V of the answer herein (Tr. pp. 11-12) admits the sailors were not equally divided, the proofs also show that, and that at times during the night there would be but one man on deck (Tr. pp. 22-23), and petitioners therefore were not deserters,

but had a statutory right to leave the vessel, which was denied them herein.

GENERAL REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

The enforcement of this section is of the greatest importance to seamen, passengers and every person that goes to sea, and Congress had but one purpose in passing it, that of always having sufficient men on deck, so that in case of disaster enough men would be there to get boats, life rafts out, and do other work that might lead to the safety of the lives of those who are asleep. The section was passed shortly after the investigations of the enormous loss of life occasioned by the loss of the "Titanic" and "Volturnia", and the following parts of the debates before the Committee shows the plain intent of Congress, the same being from pages 18 and 19 of the "Extension of Remarks of Hon. John E. Raker", and similar matters run all the way through the proceedings that led up to the passage of the section.

> "Hon. William B. L. Wilson, M. C. of Pennsylvania has introduced a bill (H. R. 11372). His bill will, when enacted, do more to promote the safety of life and property at sea than has ever been done in all the history of this country. It provides: Watch and watch at sea, dividing the crews on deck into two watches, and the engine room crew into three watches, to be on duty alternately while the ship is at sea: * * *

In my last article I promised to deal separately with the more important features of the seamen's bill. Given a good vessel, proper boats, proper davits to lower those boats, and skilled men to handle both vessel and boats, there is nothing more important than watch and watch. Watch and watch, in the language of seamen, means that the crew are divided into two equal parts, speaking of the deck crew and into three equal parts, speaking of the engine room crew. The watches are, on deck or in the engine room, on duty alternately. They steer, keep lookout, keep the lead going and do such other things as are needed for the safety of the vessel. They keep everything clean and in order. The main point, however, is that they are there to keep things safe. The Arab is said to have a maxim that, 'Nobody meets a friend in the desert'; it is equally true that 'No vessel meets a friend on the ocean'. There is no telling when you may meet a vessel, day or night, and these meetings are full of danger, because they may mean collision. * * *

There is growing up a system, mostly in steamers, sometimes called Kalashi watches. This means that certain men are kept on the regular watch and watch, while the other members of the crew are what is called 'day men': the 'day men' work all day and are supposed to sleep all night. Of course, if anything happens, they are called out, and this is seldom considered on the next day, when they are kept at their work as if nothing had happened the night before.

This, of course, is hard on the men, but in itself has very little to do with safety, except as explained later. Some vessels have brought it down to having only two men to steer and two to keep lookout. Others have four to steer

and two to take lookout. This gives four or two hours at the wheel and four hours on the lookout. The British Commission laid it down as a demonstrated proposition that no man can give the attention necessary to proper steering for more than two hours at a time. For the same reason no man is in a fit condition to keep lookout for more than two hours without rest. * * *

Vessels are kept close in to save coal and be more comfortable, and that is right; but without a good lookout and an attentive helmsman, it is dangerous. Then there is the failure to see another vessel in time; there is a collision and life and property are lost. At such times the Kalashi watch shows what it really is, one man at the wheel and one man at the lookout, perhaps one more man on deck somewhere. The men are in their bunks asleep when she hits the shore or the other vessel. Every minute means more at this time than hours later. The men come on deck; they are sluggish with sleep; they come from the light in the forecastle out into a different light or darkness on deck. It takes sometime to come out; it takes more time to get accustomed to the different light or darkness on deck; they cannot act with the readiness and precision needed in such cases. The most important and valuable time is lost, and so probably are a number of lives; if one-half of the crew were on deck at the time, they would go ahead and do what is needed, and when the watch below comes up they are led by men on deck. The work goes promptly forward, and the chances of rescue are much greater.

By the time the watch below is on deck the boats are cast loose and ready to be put over the side if such is the necessary action. But aside from that, the passengers come on deck and finding the men cool and about their business, become themselves more cool and confi-

dent. There is order, action, confidence, and therefore a much improved chance of getting out of the most desperate scrape. With but the lookout, the helmsman, and the officer on deck when the trouble begins, there is a scurry to get the men out. The master is shouting orders that are not obeyed; because there is nobody to obey them, the men come on deck stupid from sleep and a change of light. Some time passes before the proper work begins to move; there is excitement which communicates itself to the passengers, who then try to seize the boats, and the result may be a free for all fight before any real rescue work can be done."

It is plain that Congress intended to abolish Kalashi watches, and it is plain the master of the "Lewis Luckenbach" still retained them, and it is very plain, this vessel was operated in violation of law, and the libelants had a right to leave.

Safety of life at sea is of the greatest importance. Congress in its wisdom established the rules to promote safety, and the law says that any seaman may leave the vessel if the statutory requirements were not followed, and they were not, so petitioners were deprived of a statutory right herein, besides the jeopardising of the laws prescribed by Congress to promote safety of life at sea.

There seems no question but what the construction given by the learned United States Circuit Court of Appeals and the learned District Court of the United States was erroneous; the law is very plain, it says in so far as applicable here,

"the sailors shall, while at sea, be divided into at least two, * * * watches, * * * which

> shall be kept on duty successively for the performance of ordinary work incident to the sailing and management of the vessel." * * *

Of course seven of the sailors in this case were not divided into watches at all, nor were they "on duty successively" to any watch or person; they went on watch in the morning, stayed until evening and then went off for fifteen hours; no similar or any body of men either preceded or followed them, so the being "on duty successively" was not followed; but the term divide has a well defined meaning, as follows:

> *Graves v. White*, 127 Am. St. Rep. 106:
>
> Syllabus. "By common usage the common acceptation and definition of the word 'divide' unqualified by other words when used between two contracting parties, binds the severance or partition in two equal parts."

The parties in this case were contracting parties.

Supposing the language was, "shall be divided into at least two parts", instead of "into at least two watches", would anyone contend for a moment that a division into 3 and 3 and 7 was a proper division? Webster's Imperial Dictionary gives the definition of the word "Divide" as follows:

> "9. In mathematics (a) to cause to undergo the operation of division, (b) to be contained in an *equal number of times;* as, ten divides thirty."
>
> "11. *To mark into equal or regular parts;* to graduate; as, to divide a micrometer."

Supposing a board of directors of a corporation in which the capital stock was held in equal parts by three stockholders should divide the sum of $100.00 between them as these watches were divided, to wit, two of the stockholders should get $20.00 each, and the other $60.00; would anyone contend that the money was properly divided? They certainly would not.

If a person was told to divide a number of men into not less than two companies, or not less than two platoons, or not less than two divisions, he as a matter of course would divide them equally, and if he did not, the person so telling him would immediately say he had not divided them according to instructions, but had scattered them. As the above case says, the word "divide" without any qualifying words necessarily means an equal division, but as we have said there was no division or successive duty of the day body of the crew in this instance.

But the decision of the lower court herein is to the effect that when you are told to divide, you are not required to divide into equal parts; we submit that that is not the meaning of the word, that the word "divide" means equal parts and nothing else.

But the gravity of the situation arises from the fact that Congress, after a long, thorough and patient investigation, determined that the division required by said Sec. 2 should be followed on vessels to promote safety at sea, and the effect of the deci-

sions herein are that the terms of the statute need not be followed, or complied with.

We respectfully submit that this case is of great importance, and a ruling of this court should be had upon the meaning of the said section.

Dated, San Francisco,
December 6, 1924.

Respectfully submitted,
H. W. HUTTON,
Attorney for Petitioners.

NOTICE OF TIME OF SUBMISSION.

The respondent in the above cause and its attorneys will please take notice, that the foregoing petition for a writ of certiorari will be submitted to the Supreme Court of the United States for decision, at its Court Room, Capitol Building, Washington, District of Columbia, on Monday the 29th day of December, 1924, at the opening of said Court on that day.

Dated, San Francisco,
December 6, 1924.

Yours respectfully,
H. W. HUTTON,
Attorney for Petitioners.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1925

No. 224

WILLIAM O'HARA and SVEN TJERSLAND,
Petitioners,

vs.

LUCKENBACH STEAMSHIP COMPANY,
Respondent.

BRIEF FOR PETITIONERS.

H. W. HUTTON,
Pacific Building, San Francisco,
Attorney for Petitioners.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1925

No. 224

WILLIAM O'HARA and SVEN TJERSLAND,
Petitioners,

vs.

LUCKENBACH STEAMSHIP COMPANY,
Respondent.

BRIEF FOR PETITIONERS.

I.

STATEMENT OF FACTS.

This case comes before the Court on a petition for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit, granted by this Court January 12, 1925.

The case involves the construction of parts of Section 2 of the Act of Congress, dated March 5th, 1915, 38 Stat. at Large, pp. 1164-1185, entitled:

> "An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a

penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; *and to promote safety at sea.*"

The parts of said Section 2 involved herein reading as follows:

"That in all merchant vessels of the United States of more than one hundred tons gross, excepting those navigation rivers, harbors, bays, or sounds exclusively, the sailors shall, while at sea, be divided into at least two, and the firemen, oilers, and watertenders into at least three watches, which shall be kept on duty successively for the performance of ordinary work incident to the sailing and management of the vessel.

* * * * * * * * *

Whenever the master of any vessel shall fail to comply with this section, the seamen shall be entitled to discharge from such vessel and to receive the wages earned. But this section shall not apply to fishing or whaling vessels, or yachts."

Petitioners were quartermasters (seamen) on a vessel called the "Lewis Luckenbach", which was a merchant vessel of 14,400 tons dead weight, 527½ feet long, and 68.2 feet beam (Tr. p. 42), and signed on her at New York on the 30th day of September, 1922, for a voyage to Pacific Coast ports of the United States, and return to some port on the Atlantic Coast North of Cape Hatteras for final discharge.

There were 10 sailors and 3 quartermasters and the 10 sailors were divided up as follows:

Three stood watch with the quartermasters, four hours on and eight hours off, and the other 7 sailors worked from eight in the morning to five o'clock in the evening, then went off duty, to bed undoubtedly,

when bed time came. At night time there would be on watch one quartermaster at the wheel, who would stay there for two hours, then the lookout would relieve him for a half hour, during which time there would be no lookout. That would happen from 10:00 to 10:30 P. M. each night, and from 2:00 to 2:30 each morning from 24 hours after the vessel left New York, to the time she arrived in San Pedro, California; the rest of the men on the ship, excepting one officer on the bridge being asleep during those times (Tr. pp. 21-26).

There is no dispute on the above facts, and upon the arrival of the vessel in San Francisco, libelants demanded their discharges, giving more than one reason, but the operation of the vessel in violation of law in the above particulars among the reasons. Their discharge was refused them. They left, were declared deserters, and this action is brought for the wages earned, and two days pay for the refusal to pay them.

The United States District Court decided that Section 2 above quoted was passed to prevent overwork, and

> "not to prescribe the number of seamen on each watch"

and dismissed the libel (Tr. p. 45).

Upon appeal the learned United States Circuit Court of Appeals for the Ninth Circuit affirmed the judgment, saying, among other things:

> "The purpose of Congress was obviously to provide for the safety of the ship in the selection of qualified quartermasters, and men for the lookout,

and also to prevent overwork. The division of the men into watches as disclosed by the evidence in this case was not contrary to the statute."

The master of the vessel testified (Tr. p. 40):

"Q. From 5 o'clock at night until the morning, all there would be on deck on actual duty would be an officer, a quartermaster and one sailor?
A. Yes; on that trip."

It also appears that the officer would be on the bridge, which is located amidship, of the length of the ship, so when the quartermaster was below, and the lookout in the wheel house, there was no one forward of the bridge, and in case of disaster no one to get boats out or call those asleep, and no person on a ship of 14,400 tons and 527½ feet long to observe the approach of other vessels or nearness to shore. The officer is not supposed to do that exclusively, he has other duties to attend to. A lookout is a person stationed at the place he can most likely observe objects ahead, and who has nothing else to do but to watch for such things.

Some claim is made herein about sailors deserting vessels upon their arrival on the Pacific Coast, but it appears (Tr. p. 40) that the crew never went shorthanded; they were always able to fill up.

II.

ASSIGNMENT OF ERRORS.

Transcript pages 47-48:

1. The Court erred in finding and deciding that the primary object of Section 2, of the Act of Con-

gress of date March 4th, 1914, commonly known as the Seamen's Bill, or La Follette Act, was to fix the hours of service of seamen.

(By inadvertence the date of the act in question is above given as March 4th, 1914. It should be March 5th, 1915.)

2. The Court erred in finding and deciding that the primary object of said Section 2 of said act was to prevent overwork.

3. The Court erred in finding and deciding that the primary purpose of said Section 2 of said act was not to prescribe the number of seamen that should be on each watch on a vessel.

4. The Court erred in concerning itself as to whether any seamen employed on vessel would have little or nothing to do at night or at any other time.

5. The Court erred in not finding and deciding that the following language in said Section 2 of said act, "The sailors shall, while at sea, be divided into at least two, and the firemen, oilers, and watertenders into at least three watches," compels such of sailors on a vessel to be divided into equal parts as near as they can be divided.

6. The Court erred in not finding and deciding that the intention of Congress in passing said Section 2 of said act was to always have enough men on the deck of a vessel to make necessary provisions for safety in the event of a disaster.

7. The Court erred in not finding and deciding that the requirement of dividing sailors into at least

two watches on a vessel is a safety requirement and for the protection of life at sea.

8. The Court erred in not finding and deciding that the language, divided into at least two watches, compelled the dividing of the sailors on the "Lewis Luckenbach" into two or more equal parts.

9. The Court erred in finding that the libelants were not entitled to their discharge from the "Lewis Luckenbach" at the times mentioned in the amended libel herein, and in not finding and deciding that each was entitled to his discharge.

10. The Court erred in not ordering judgment for each of the libelants as prayed for in the amended libel herein.

11. The Court erred in dismissing libelants' libel herein, and dismissing said libel as to each of the libelants.

12. The Court erred in not finding and deciding that, according to the general understanding of the English language, the meaning of the language divided in two or more watches, means an equal division as near as may be.

13. The Court erred in not finding and deciding that the term divide means an equal division as near as may be.

III.

ARGUMENT.

A thrill of horror went around the world when the "Titanic" was lost with the attendant enormous loss

of life. The "Volturnia" was lost at about the same time, with another enormous loss of life. As to the "Titanic" not a single life should have been lost if she had had proper boat equipment and crews to man them. Very shortly thereafter an international conference was called in London to devise means of saving life at sea, some, but not a great deal of good came out of the conference. Congress was then considering what is called the "Seamen's Act", and at the time above mentioned it was passed, but the act is not merely a "Seamen's Act". The last part of its title reads:

"*and to promote safety at sea*".

The act contains 22½ pages, not 5 of which are taken up with seamen's matters, and where taken up in the first pages, a considerable portion thereof is devoted to matters relating to safety at sea. Section 2 was amended for no other reason than to see that boats could be speedily manned in case of disaster, as we will hereafter show.

Section 6 relates entirely to health.

Sections 7 and 8 relate entirely to discipline, and about 7 pages of the act are entirely taken up with lifeboats, liferafts, lifebuoys, davits on which to swing boats, and other matters, showing that Congress had in mind the endeavor to try and stop the loss of another 1500 and odd lives in one catastrophy by the sole failure to have sufficient boats and life saving rafts on board. That part of the act is headed:

"Regulations.
Life-saving Appliances,
Standard Types of Boats".

We then find a complete system for the fitting out of a ship in those regards.

Then, of course, having the boats, competent men to handle them were required. Congress provided for competent men in Section 13 of the act.

In Section 14 it provided for life boat drills, etc.

On pages 1181 to 1182 it provided for certified life-boat men, officers to command boats, musters, etc., so as to make up a complete system of saving life at sea, and then considered the question as how to make the apparatus required available, in the event that a catastrophy happened at night—the time they usually happen—and the the above Section 2 was the result.

Of course all the apparatus, drills, certified men and musters in the world would profit nothing, if by reason of the lack of a few minutes time they could not be used, or effectually put in operation. That Congress had the manning of the boats at night in mind, is clearly shown by the following part of the proceedings before Congress when the bill was being considered; the same sentiment further appearing in the remarks of other members of Congress.

The purpose of the act runs all the way through the proceedings in Congress, and we quote the following from such proceedings, it being an extract from pages 18 and 19 of the "Extension of Remarks of Hon. John E. Raker" in the House of Representatives, but

the same matters run all the way through the proceedings before both houses.

"Hon. William B. L. Wilson, M. C. of Pennsylvania has introduced a bill (H. R. 11372). His bill will, when enacted, do more to promote the safety of life and property at sea than has ever been done in all the history of this country. It provides: Watch and watch at sea, dividing the crews on deck into two watches and the engine room crew into three watches, to be on duty alternately while the ship is at sea; * * *

In my last article I promised to deal separately with the more important features of the seamen's bill. Given a good vessel, proper boats, proper davits to lower those boats, and skilled men to handle both vessel and boats, there is nothing more important than watch and watch. Watch and watch, in the language of seamen, means that the crews are divided into two equal parts, speaking of the deck crew and into three equal parts speaking of the engine room crew. The watches are, on deck or in the engine room, on duty alternately. They steer, keep lookout, keep the lead going and do such other things as are needed for the safety of the vessel. They keep everything clean and in order. The main point, however, is that they are there to keep things safe. The Arab is said to have a maxim that, 'Nobody meets a friend in the desert'; it is equally true 'No vessel meets a friend on the ocean'. There is no telling when you may meet a vessel, day or night, and these meetings are full of danger, because they may mean collision. * * *

There is growing up a system, mostly in steamers, sometimes called Kalashi watches. This means that certain men are kept on the regular watch and watch, while the other members of the crew are what is called 'day men'; the 'day men' work all day and are supposed to sleep all night. Of course, if anything happens, they are called out, and this is seldom considered on the next day, when they are kept at their work as if nothing had happened the night before.

This, of course, is hard on the men, but in itself has very little to do with safety, except as explained later. Some vessels have brought it down to having only two men to steer and two to keep lookout. Others have four to steer and two take lookout. This gives four or two hours at the wheel and four hours on the lookout. The British Commission laid it down as a demonstrated proposition that no man can give the attention necessary to proper steering for more than two hours at a time. For the same reason no man is in a fit condition to keep lookout for more than two hours without rest. * * *

Vessels are kept close in to save coal and be more comfortable, and that is right; but without a good lookout and an attentive helmsman, it is dangerous. Then there is the failure to see another vessel in time; there is a collision and life and property are lost. At such times the Kalashi watch shows what it really is one man at the wheel and one man at the lookout, perhaps one more man on deck somewhere. The men are in their bunks asleep when she hits the shore or the other vessel. Every minute means more at this time than hours later. The men come on deck; they are sluggish with sleep; they come from the light in the forecastle out into a different light or darkness on deck. It takes sometime to come out; it takes more time to get accustomed to the different light or darkness on deck; they cannot act with the readiness and precision needed in such cases. The most important and valuable time is lost, and so probably are a number of lives; if one-half of the crew were on deck at the time, they would go ahead and do what is needed, and when the watch below comes up they are led by men on deck. The work goes promptly forward, and the chances of rescue are much greater.

By the time the watch below is on deck the boats are cast loose and ready to be put over the side if such is the necessary action. But aside from that, the passengers come on deck and finding the men cool and about their business, become themselves more cool and confident. There is order, action, confidence, and therefore a much improved chance

of getting out of the most desperate scrape. With but the lookout, the helmsman, and the officer on deck when the trouble begins, there is a scurry to get the men out. The master is shouting orders that are not obeyed; because there is nobody to obey them, the men come on deck stupid from sleep and a change of light. Some time passes before the proper work begins to move; there is excitement which communicates itself to the passengers, who then try to seize the boats, and the result may be a free for all fight before any real rescue work can be done."

It is plain that Congress intended to abolish Kalashi watches, and it is plain the master of the "Lewis Luckenbach" still retained them, and it is very plain, this vessel was operated in violation of law, and the libelants had a right to leave.

Congress made an extended and painstaking investigation, then determined that certain requirements were necessary to prevent further unnecessary loss of life at sea. We cannot conceive of any more important investigation it ever made, then in its wisdom it established the rules we have mentioned, and Section 2, which was adopted for the plain and only purpose of always having sufficient men on deck so that in case of disaster enough men would be there to get boats and liferafts out, and do other work that might lead to the safety of the lives of those on board, who in the nature of things would otherwise be asleep. The purpose of Congress was unquestionably a laudable one, and in the law it said that if the law was not followed any seaman could leave the vessel. It is admitted it was not followed in this instance, so petitioners had a statutory right to leave, hence were not deserters, and were entitled to judgment, and in addition to that the lives of every person on the "Lewis

Luckenbach" were jeopardized by the failure to observe the laws, which laws were evidently treated as of no consequence by the master of the vessel.

There seems no question but what the construction given by the learned United States District Court and the United States Circuit Court of Appeals was erroneous herein. The law is very plain. It says, so far as applicable here,

> "the sailors shall, while at sea, be divided into at least two, * * * watches, * * * which shall be kept on duty successively for the performance of ordinary work incident to the sailing and management of the vessel. * * *"

Of course, seven of the sailors in this case were not divided into watches at all, nor were they on duty "successively," to any watch or person; they went on watch at eight in the morning, stayed until five o'clock in the evening. No similar or any body of men either preceded or followed them, so the being "on duty successively" was also entirely absent in this case, and the very thing that Congress determined should be done—have men on deck to man boats, etc., in case of and to prevent disaster—was not done at all, and the policy it established for the United States in promoting safety at sea was entirely ignored.

The word "divide" has a well defined meaning, as follows:

Graves v. White, 127 Am. St. Rep. 106.

Syllabus:

> "By common usage the common acceptation and definition of the word 'divide' unqualified by other words when used between two contracting parties, binds the severance or partition in two equal parts."

The parties in this case were contracting parties.

If the language had been "shall be divided into at least two parts" instead of "into at least two watches" it would have meant exactly the same, and no one would then contend that 3 and 7 was a proper division.

Webster's Imperial Dictionary gives the following definition of the word "divide":

> "9. In mathematics (a) to cause to undergo the operation of division, (b) to be contained in an equal number of times; as ten divides thirty."
>
> "11. To make into equal or regular parts; to graduate; as, to divide a micrometer."

We respectfully submit that the decisions of both the lower courts herein were erroneous, not only in their construction of the word divide, but also in their determination of the intent of Congress; that the true intent of Congress when it adopted the act in question, was to establish how merchant vessels should be operated with the least risk to those who went to sea on them; that its plain intent is apparent, and its policy was to endeavor to lessen the risks of sea travel, and that the said decisions herein are in effect that such intent and policy need not be complied with.

It seems needless for us to mention the importance of this case and we respectfully ask that the decisions of the lower courts herein be reversed.

Dated, San Francisco,
August 12, 1925.

Respectfully submitted,
H. W. Hutton,
Attorney for Petitioners.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1925

No. 224

WILLIAM O'HARA and SVEN TJERSLAND,
Petitioners,

vs.

LUCKENBACH STEAMSHIP COMPANY,
Respondent.

REPLY BRIEF FOR PETITIONERS.

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THE PURPOSE OF THIS STATUTE WAS TO PROMOTE SAFETY AT SEA, AND NOT TO PREVENT OVERWORK.

A complete answer to the claim that the statute in question was passed to prevent overwork, is found in the fact that Congress has no power to pass a statute to prevent overwork merely because it is overwork. That is a matter entirely between the employer and employee. Congress is presumed to know and to keep within its powers; it has the power to promote safety at sea; looking to the title of this statute for the intent within the powers of Congress we find it very clearly written therein *"to promote safety at sea."*

The powers of Congress in a somewhat similar matter are fully discussed in

Wilson v. New, 243 U. S. 332,

in which this Court says in effect, that matters personal must be settled between the employer and employee, but, that Congress has the power to legislate on matters affecting interstate commerce and the public interest therein. Neither interstate commerce or the public interest therein would be affected by the mere fact that a sailor worked an hour or two more a day. If, on the other hand a division of the sailors was necessary to ensure proper safety, interstate commerce and the public interest therein would be affected and the powers of Congress would immediately attach. We must presume that Congress did not intend to exceed, but to keep within its powers in this instance, and that therefore its intent was to promote safety at sea.

What Congress intended is very clear; it defined the watches of the sailors, so that there would be men on deck at all times to prevent disaster and promptly do necessary work if disaster should then happen, all for safety, and also defined the watches of the oilers, water-tenders and firemen also to promote safety, watches in the engine and fire rooms being necessary for the following reasons: Those places are always hot—in warm climates insufferably hot—the work is constant vigilance, the oilers keep the engine bearings lubricated, and have to constantly go around the engine and with their hands, feel the bearings and working parts of the engine to ascertain whether the working parts warm up on account of defective lubri-

cation—a hot bearing means stopping the engine and in a rough sea, that may mean the loss of the vessel. The water-tenders take care of the feed and bilge pumps and keep the water in the boilers at a certain height. If the water gets too low in the boiler, the boiler is ruined and the vessel may need that particular boiler, and the bilges get full of water if the bilge pumps are not attended to. The fireman keeps steam up. Low steam at a time of emergency may mean disaster. Four hours at such work dulls a man's vigilance, and the safety of the vessel depends on constant vigilance in each of the above particulars.

Congress made no provisions for many of the vessel's company. A vessel's complement is made up of:

1. The master.

2. The seamen.

Every person employed on a vessel, except the master and apprentices, are seamen.

Section 4612 Revised Statutes.

The seamen on this vessel were, therefore:

Deck Departments: Four mates, three quartermasters and ten sailors;

Engine Department: Engineers—probably four—oilers, water-tenders and firemen;

Culinary Department: Stewards, cooks and waiters.

Except as their safety was concerned, it would make no difference to the mates, quartermasters, engineers, stewards, cooks, waiters, oilers, firemen and water-tenders, whether a sailor was overworked or not, and it would make no difference to either of the sailors

whether the firemen, oilers and water-tenders were overworked or not. Still the statute reads as to the sailors:

> "the sailors shall, while at sea, be divided into at least two * * * watches * * *."

And also reads:

> "Whenever the master of any vessel shall fail to comply with this section, the *seamen*"—

That is, the mates, quartermasters, engineers, oilers, water-tenders, firemen, stewards, cooks and waiters, who were in no way interested in whether the sailors were overworked or not, except as their safety might be endangered:

> —"shall be entitled to discharge from such vessel and to receive the wages earned."

Nor were the sailors, or any of the groups on the vessel other than the firemen, oilers and water-tenders, interested other than as their safety was concerned, whether the oilers, firemen and water-tenders were placed on not less than three watches or not. Still they all would be entitled to their discharge and wages if that was not done.

It is not reasonable that if overwork was the purpose of Congress, it would have picked out the sailors, oilers, firemen and water-tenders and left everyone else on the vessel unprovided for in that particular.

The fact that Congress did not legislate for all on board shows clearly that overwork was not the issue before it.

The fact is that the vessel would get more hours work per day by putting the sailors on not less than

two watches than it did on the "Kalashi" watch plan, as follows:

The seven sailors on this vessel worked 56 hours per day under the plan followed. On the two watch plan provided by the statute the working day would commence at 4 A. M., one hour then being taken up for coffee, from 5 A. M. There would be four men working washing decks which is always done at that time on the two watch plan, and one man on the lookout. Four hours would thus be obtained. At 6 A. M. the man on the lookout would join them and 10 hours work would be obtained up to 8 A. M., when the next watch came on deck. From 8 A. M. there would be five men working or a total of 20 hours, and from noon to 6 P. M.—4 to 6 P. M. being what is called a dog watch—there would be 30 hours, the total being 64 hours as against 56.

And we respectfully submit, that the following matter contained in the opinion of the District Court herein, and found on pages 10 and 11 of respondent's brief herein, is not a matter for the concern of a Court.

> "If one-half or one-third of the crew must be assigned to duty at night, it is quite apparent that a majority of those assigned will have little or nothing to do."

The statute is clear on the subject, and it was for Congress to determine what should be done.

We also respectfully say that the Circuit Court of Appeals erred herein, when it decided as follows (page 12 of Respondent's Brief):

> "The purpose of Congress was obviously to provide for the safety of the ship in the selection of

qualified quartermasters and any men for the lookout, and also to prevent overwork."

Section 2 of the Act.

The section involved herein does not mention either quartermasters or lookout or "qualifications". The qualifications are provided for by Section 38 of the same Act. 38 Stat. at Large 1169, requiring the Board of Local Inspectors to examine seamen and issue them certificates, and that on the fourth year after the passage of the Act, at least sixty-five per cent of the deck crew, exclusive of licensed officers and apprentices, should be "of rating not less than able seamen", and such able seamen under that section must have been examined as aforesaid, and have a certificate to that effect. So it is very clear that Congress was not considering qualifications of either quartermasters or sailors when it passed the bill.

The bill first came before the Committee on the Merchant Marine and Fisheries, as House Bill 11372, on Tuesday, December 14, 1911. As to Mr. Furuseth's views on the purpose of the bill, and he took the laboring oar all the way through, we quote the following (page 12 of hearing before that committee):

> "Mr. FURUSETH. The bill itself has three main features. The first is to improve the condition of the seamen in all the branches of the service so as to further induce the American boy to go to sea, and the American man to remain at sea when he once has gone there—a condition which does not now exist. The second feature of the bill *is with a view of improving safety of life and property at sea. We hold that the most important means to that end is an efficient crew.*
>
> Thirdly, this subject deals with crews who cannot understand the English language only."

On page 56, we find:

"In my last article I promised to deal separately with the more important features of the seamen's bill. Given a good vessel, proper boats, proper davits to lower those boats, and skilled men to handle both vessels and boats, there is nothing more important than watch-and-watch.

Watch-and-watch, in the language of seamen, means that the crew are divided into two equal parts, speaking of the deck crew, and into three equal parts speaking of the engine room crew. The watches are on deck or in the engine room on duty alternately. They steer, keep lookout, keep the lead going, and do such other things as are needed for the safety of the vessel. They keep everything clean and in order, the main point, however, *is that they are there to keep things safe.* The Arab is said to have a maxim that 'nobody meets a friend in the desert.' It is equally true that 'No vessel meets a friend on the ocean.'

There is no telling when you may meet a vessel, day or night, and these meetings are full of danger, because they mean collisions. No matter how careful the officers and men of one vessel may be, the other vessel may have men who are careless, undisciplined, or tired out by work and lack of sleep until they fail from sheer exhaustion. Be is remembered that it takes two to avoid a collision.

* * * * * * *

Vessels are kept close in to save coal and to be more comfortable, and that is right, but without a good lookout and an attentive helmsman, it is dangerous. Then there is the failure to see another vessel in time; there is a collision, and life and property are lost. At such time the 'Kalashi' watch shows what it really is. One man at the wheel, and one man at the lookout, perhaps one more man on deck somewhere. The men are in their bunks asleep when she hits the shore or the other vessel. Every minute means more at this

time than hours later. The men come on deck, they are sluggish with sleep, they come from the light in the forecastle out into a different light or darkness on deck. It takes some time to come out; it takes more time to get accustomed to the different lights, or darkness on deck; they cannot act with the readiness and precision needed in such cases. The most important and valuable time is lost, and so, probably are a number of lives. If one-half the crew were on deck at the time they would go ahead and do what is needed, and when the watch below comes up they are led by the men on deck. The work goes promptly forward and the chances of rescue are much greater.

By the time the watch below is on deck the boats are cast loose and ready to be put over the side; such is the necessary action. But aside from that, the passengers come on deck and finding the men cool and about their business, become themselves more cool and confident. There is order, action, confidence, and therefore a much improved chance of getting out of the most desperate scrape.

With but the lookout, the helmsman and the officer on deck when the trouble begins there is a scurry to get the men out. The master is shouting orders that are not observed because there is nobody to obey them. The men come on deck stupid from sleep and the change of light. Some time passes before the proper work begins to move; there is excitement, which communicates itself to the passengers, who then try to seize the boats, and the result may be a free for all fight before any real rescue work can be done."

The report of the Committee on the Bill was made May 2, 1912, and is Report No. 645, 62nd Congress, 2nd Session, to accompany H. R. 23673, and commences:

"The committee on the Merchant Marine and Fisheries, to which was referred the bill (H. R. 23673) to abolish the involuntary servitude imposed upon seamen in the merchant marine of the United States while in foreign ports and the involuntary servitude imposed upon the seamen of the merchant marine of foreign countries while in the ports of the United States, to prevent unskilled manning of American vessels, to encourage the training of boys in the American merchant marine, *for the further protection of life at sea,* and to amend the laws relative to seamen, submits the following report, and recommend that the bill do pass with the following amendments;"

It will be observed there is not a word about overwork in that language.

The number of the bill had been changed while being considered by the Committee, from 11372 to 23673, and Section 2, in issue herein, was then a part of Section 1, but became Section 2 in the Senate, by reason of the report of the Department of Commerce and Labor, of date, November 22, 1912. At the bottom of page 5 and top of page 6 of that report, a separate section is suggested for the reason,

"To make clear their scope, they should be in one or more distinct sections, independent of section 4516, which has restricted application, although 'at sea' would include the great lakes."

Section 2, herein considered, being a part of Section 4516 Revised Statutes in the bills, as it came from the House of Representatives.

The first hearing before the Senate Subcommittee of the Committee on Commerce, was had on December 2, 1912, and on December 4, 1912, Mr. Furuseth

stated before that Committee as follows (page 166 of the proceedings of that Committee):

> "But that is not the worst phase of this thing. The very worst phase of it is this: the question of safety to the travelling public and to us. As far as seamen are concerned, I presume we have as many friends down in the warm place as any of you, and it will not make much difference. But there are a good many more of you people on shore travel than there are of us, and you stand the chances of getting drowned just as much as we do. And I want to say to you gentlemen this: that when the *'Columbia'* went down, she went down within five minutes. The men were not on deck. They did not have even a chance to cut away the boats when she went down. She went down at once, and she drowned 86 men, and the seamen on board of that vessel managed to get out and some boats were cut away and some tore themselves adrift. They were laying some bottom up and some on even keel. The men climbed on board these boats, emptied them out, and began saving life there. If those men had been on deck, as they should have been, and as they would be if it was not for your limited liability law, and your safety from risk, and your insurance—if it was not for that you would never go to sea with the kind of crews you have now. But as it is now, the men stay there in the forecastle; they are undressed; it takes seven minutes at the very least, to get out, and in some forecastles it takes ten minutes, under the circumstances. A man comes out from one kind of a light, and he is useless when he comes out; everything is in a hurly-burly on deck. One man shouts and another man shouts, and nobody obeys. If the watch is on deck, where they belong, the moment there is any trouble they are ready to carry out the master's or the mate's order. When the crew comes out of the forecastle they are led by the men who are already out. That is safety of life, and I do not care who will say to the contrary. There is not

a seaman standing on his own bottom, clean-hearted and without a collar on, who can undertake to dispute the truth of my statement here now."

Mr. Furuseth furnished a written statement to the Committee of the House on "Kalashi" watches. It is to be found on page 57 of the proceedings of that Committee, and is in substance the same as the "Extension of the Remarks" of the Honorable John E. Raker, a part of which is printed in our brief. The remarks of Mr. Raker, having been made by him before the House of Representatives, July 12, 1912.

Mr. Furuseth explained the meaning of the word "Kalashi" at different times as being a watch that originally existed among the Kalashis, or the Hindu seamen, along the coast of India, where the men worked all day and were subject to call at any time during the night.

It is the duty of the officer of the watch to prevent men from "picking out a warm place to sleep." The presumption is they will not do so also.

Keeping a vessel clean is just as much a part of the "sailing and management" of a vessel as anything else that is done on her, and having men at hand in case of disaster is certainly a part of her "sailing and management."

The testimony of the master of the vessel (Tr. p. 32) shows conclusively that petitioners claimed their discharge on account of the failure to have the sailors stand watch-and-watch.

The testimony is clear, also, that there was a period of one-half hour twice each night, when there was no lookout.

The master's testimony on the subject is evasive (Tr. p. 33). He says, "To my knowledge." That means he does not know. He would not be likely to know, as the officer of the deck has charge of that.

As to the following language on page 8 of respondent's brief:

> "1. Establishing 'watch and watch' at sea and prohibiting unnecessary work on Sundays and holidays in port, thus insuring the amount of rest necessary to the highest state of efficiency * * *."

It seems very clear from its reading, that the words,

> "thus insuring the amount of rest necessary to the highest state of efficiency.",

refer to the following previous language:

> "and prohibiting unnecessary work on Sundays and holidays in port.",

and do not refer to "watch and watch" at sea.

But if it did, the master violated the law as he testified (Tr. p. 27) that if he had followed the law the men would not be doing anything during the night time, and the language of Messrs. Furuseth, Fraizer and MacArthur, is:

> "necessary to the highest state of efficiency."

Showing it was "efficiency", not "overwork" they had in mind, and efficiency is necessary to safety.

The "Titanic" was lost April 14, 1912, with a loss of 1517 lives out of 2,223 on board. An investigation

of the matter was made and reported to the Senate May 28, 1912, the report consisting of 82 pages. On the same day Senator Rayner of Maryland, addressed the Senate and in his remarks we find the following:

> "Mr. President, we must change the admiralty and navigation laws of this country. They consist of an incongruous collection of antiquated statutes which should be repealed and reenacted.
>
> "Mr. President, I desire to ask the attention of the Senate briefly to the subject matter indicated in my notice in reference to the disaster to the 'Titanic'.
>
> I shall not bring to your attention the harrowing details of this overwhelming calamity, but my purpose is to ascertain what lessons this disaster teaches us and what legislation, if possible, can be framed in order to avoid its recurrence.
>
> Mr. President, we must change the admiralty and navigation laws of this country * * *."

The whole speech is an appeal for greater safety at sea, and Congress thereafter spent about three years and produced the bill of which Section 2 in issue herein is a part, and the whole scheme was practically the outgrowth of that disaster.

Safety is the keynote all through the hearings and discussions, and we have failed to find any statement that overwork was under consideration at any time. There may have been an idle remark here and there, as such remarks sometimes occur in any proceeding, no one talks with mathematical precisions, but nowhere can we find anything but that the main purpose of Congress was to legislate for safety at sea.

In conclusion it may be asked, how can a statute which if followed compels a sailor to work 12 hours

per day, have been passed to prevent overwork when otherwise he might only be working 8 hours per day, and why are sailors trying to have 12 hours work per day established as against 8 hours per day? It shows clearly that safety is what is in issue herein, not overwork, for a seaman's life is of as much value to him as is the life of any other person, to that person.

Dated, San Francisco,
November 2, 1925.

Respectfully submitted,
H. W. HUTTON,
Attorney for Petitioners.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1925

No. 224

WILLIAM O'HARA and SVEN TJERSLAND,
Petitioners,

vs.

LUCKENBACH STEAMSHIP COMPANY, INC.
(a corporation),
Respondent.

BRIEF FOR RESPONDENT.

Peter S. Carter

LOUIS T. HENGSTLER,
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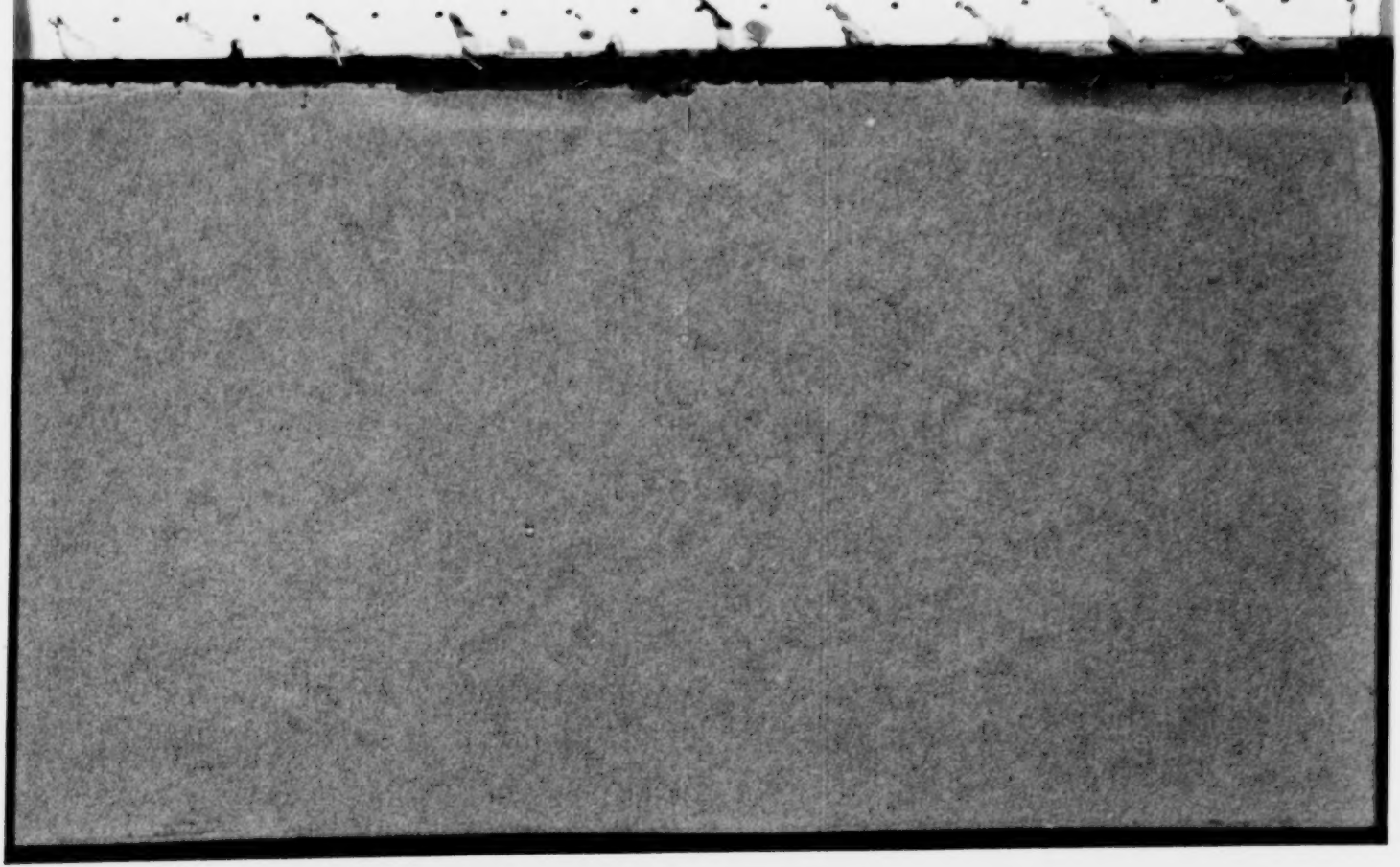
Proctors for Respondent.



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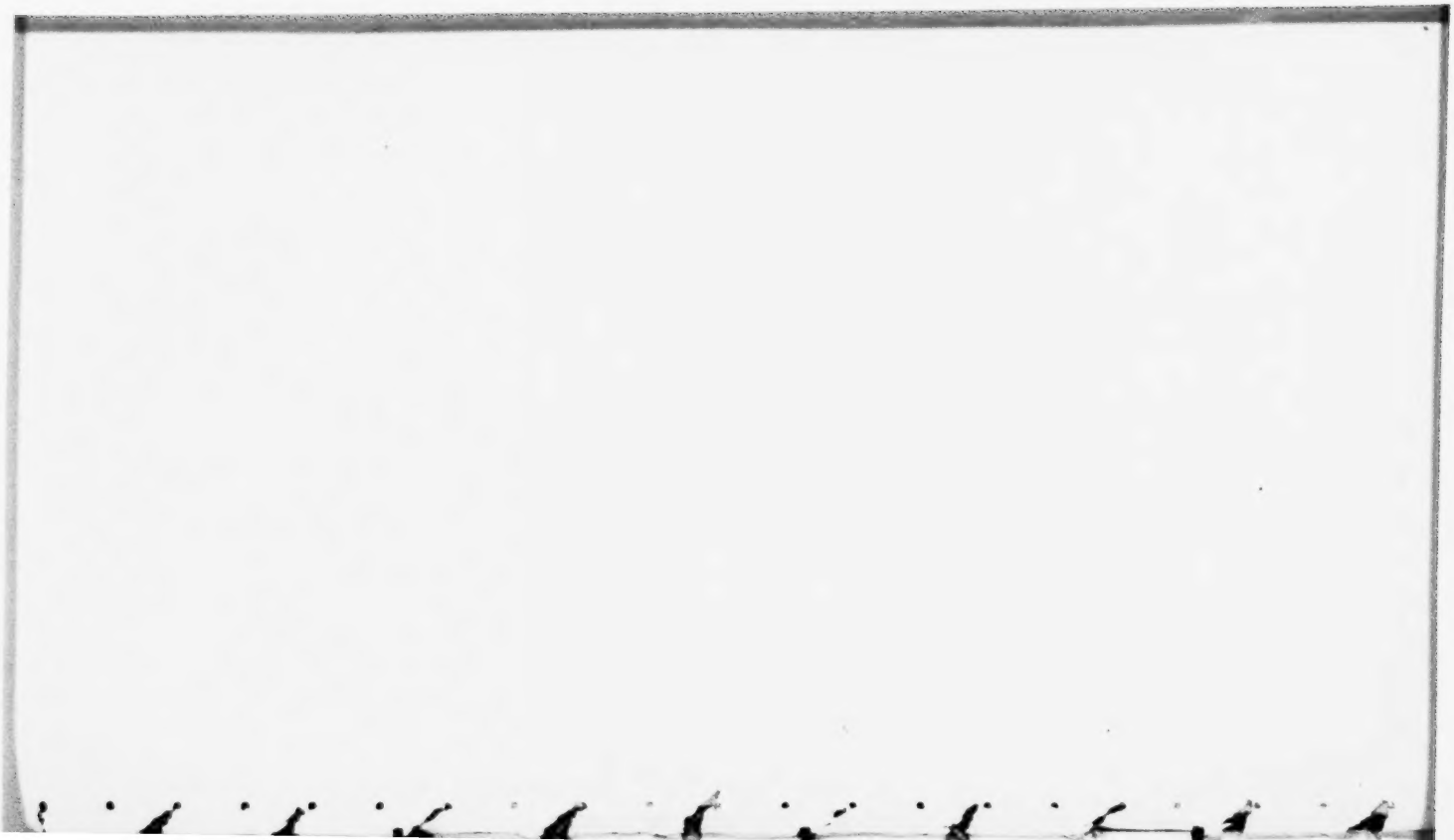

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BRIEF FOR RESPONDENT.

INTRODUCTORY STATEMENT.

The questions involved in this appeal arise out of the construction of Section 2 of the Act of Congress, March 4, 1915, ch. 153 (38 Stat. 1164), popularly known as the La Follette Seamen's Act.

The petitioners were quartermasters employed on the steamship "Lewis Luckenbach", owned and oper-

(Note: The opinion of the Circuit Court of Appeals may be found in 1 Fed. Rep. (2nd Series) 923, and at page 61 of the printed record. The opinion of the District Court may be found in 1924 American Maritime Cases at page 199, and at page 44 of the printed record.)

ated by respondent, for a voyage from New York to Pacific Coast ports, *and return* to the Atlantic, at a wage of $45 per month. Upon reaching San Francisco, the petitioners demanded that they be paid off, without any reason or excuse whatever.* (Record, p. 34.) When this was refused, they demanded a certificate to the U. S. Marine Hospital, which was given to them. (Record, p. 34.) Not being successful at obtaining their discharge on the ground of disability, they next claimed that the ship was violating the law in regard to dividing the crew into watches, and that they were entitled to discharge upon that ground. (Record, p. 35.)

It appears from the undisputed testimony, including that given by one of the petitioners, that there were three quartermasters on the ship, and that they were divided into three watches. (Record, p. 21.) Therefore, the complaint of the petitioners is not based upon an alleged failure to divide the petitioners, who were *quartermasters*, into watches, or upon a claim that *they* were required to work unlawful hours, but upon the claim that *other* members of the deck force were not divided equally into watches. This is quite clear from the statement in petitioners' brief, as follows:

> "There were 10 sailors and 3 quartermasters and the 10 sailors were divided up as follows:
>
> *Three stood watch with the quartermasters, four hours on and eight hours off.*"
>
> (Petitioners' Brief, p. 2.)

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* References are to the printed transcript of record.

The petitioners did not claim that they personally were on duty more than one watch out of every three, or that they were required to work more than eight hours out of every twenty-four. The basis for their libel is that *other* members of the crew, who were not standing a regular wheel or lookout watch, were on duty for eight hours at a stretch during the daytime and off duty during the night.

No complaint was made by the other men, who were not engaged in the sailing or management of the vessel, but who were employed in painting and other ship's work during the day, and were allowed to sleep at night. But, because those *other* men were not divided into equal watches, and required to do painting and ship's work at night, the quartermasters claimed the right to be discharged. The duty of a quartermaster is to steer the ship, and obviously only one man at a time can be engaged in that duty. The addition of more men to a night watch would not affect the duties of the quartermasters at all.

THE PURPOSE OF THE STATUTE IS TO PREVENT OVERWORK.

It is the contention of the petitioners that Section 2 of the Act of March 4, 1915, requires that the crew of a vessel must be divided into watches with an equal number of men on each watch, *irrespective of the duties required to be performed.*

It is our contention that the provisions of the act were intended to regulate the hours of work, at sea

and in port, and do not require any specified number of men on any one watch.

The act reads as follows:

"Sec. 2. (Watches—duties—holidays—hours of labor—vessels not affected.) That in all merchant vessels of the United States of more than one hundred tons gross, excepting those navigating rivers, harbors, bays, or sounds exclusively, *the sailors shall, while at sea, be divided into at least two,* and the firemen, oilers, and water tenders into at least three *watches,* which shall be kept on duty successively for the performance of ordinary work incident to the *sailing and management* of the vessel. The seamen shall not be shipped to work alternately in the fireroom and on deck, nor shall those shipped for deck duty be required to work in the fireroom, or vice versa; but these provisions shall not limit either the authority of the master or other officer or the obedience of the seamen when, in the judgment of the master or other officer, the whole or any part of the crew are needed for the maneuvering of the vessel or the performance of work necessary for the safety of the vessel or her cargo, or for the saving of life aboard other vessels in jeopardy, or when in port or at sea from requiring the whole or any part of the crew to participate in the performance of fire, lifeboat, and other drills. While such vessel is in a safe harbor no seaman shall be required to do any unnecessary work on Sundays or the following-named days: New Year's Day, the Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day, but this shall not prevent the dispatch of a vessel on regular schedule or when ready to proceed on her voyage. *And at all times while such vessel is in a safe harbor, nine hours,* inclusive of the anchor watch, *shall constitute a day's work.* Whenever the master of any vessel shall fail to comply with this section, *the seamen* shall be entitled to discharge from such vessel and to receive the wages earned. But this section

shall not apply to fishing or whaling vessels, or yachts. (38 Stat. L. 1164.)"

(9 Fed. St. Ann. (2nd Ed.), p. 212.)

It will be noted that while the provisions of the statute only require that "the sailors shall, while at sea, be divided into at least *two* * * * watches", the petitioners in this case, together with a third quartermaster, were divided into *three* watches, which were kept on duty successively. They were not in a position to complain that they were overworked, because, according to their own testimony, they were only required to stand a watch in *three,* instead of a watch in *two,* the maximum permitted by the statute. (Record, p. 24.)

The statute does not permit the petitioners to claim their discharge, because some *other* members of the crew, doing other work, might not have been divided into watches. The wording of the statute on this point is as follows:

"Whenever the master of any vessel shall fail to comply with this section, the *seamen* shall be entitled to discharge from such vessel and to receive the wages earned."

(9 Fed. St. Ann. (2nd Ed.), p. 212.)

The plain meaning of this provision is that the *seamen,* the specific men, who were overworked and who were required to stand more than the number of watches provided by law; or who were required to work more than nine hours in port, might claim their discharge on that ground. There is no provision in the statute which permits the whole crew to quit, be-

cause one man is overworked, or which permits one man to quit because another man is overworked. The petitioners' claim, therefore, has no foundation, because they admit that they, together with another quartermaster, stood watch successively four hours on and eight hours off, a more liberal watch than required by law.

The men who are required to be kept on duty successively, according to the plain meaning of the statute, are those men who are doing work "incident to the *sailing and management* of the vessel". The petitioners, as quartermasters, were doing work incident to the sailing and management of the ship, and were kept on duty in successive watches. Similarly, the lookouts who were also doing work incidental to the sailing and management of the vessel, were kept on duty in successive watches.

But the other seamen, about whom the complaint was made, were engaged in painting and cleaning about the decks, and were not engaged in the sailing and management of the ship. It made no difference at all in the navigation of the vessel, whether such work was performed in the daytime or at night.

THE PETITIONERS' CONTENTION IS UNREASONABLE.

The contention of the petitioners, if sustained, would require a number of men to be on watch at night, with no duties to perform. In a modern steamship there are no sails to trim, and there is no work to be done on deck at night, except to steer and keep

a lookout. This work is accomplished by assigning two men to a watch, and having them alternate between the wheel and lookout in two hour shifts. If any additional men were assigned to the same watch, they would have nothing to do. There are two stations to be filled, and any number of men in excess of two would be superfluous. If such were required, the vessel would have men technically on watch for four hours who would have nothing to do except to pick out a warm place to sleep, and at the end of four hours the same men would go off watch for eight hours more with no work to perform.

While we have no doubt that the seamen would like to see such a condition of affairs, we do not apprehend that the court, in the absence of any expressed intent by Congress, would impose such a drastic burden upon the American shipowner.

Counsel argues at length, quoting from "Extension of Remarks" of Hon. John E. Raker, in an attempt to show that the purpose of the act was to require an equal division of watches and a rotation of duties, in order to lessen the danger of accidents, etc. If, instead of the practice now in vogue by which certain men are picked for duty at the wheel and lookout on account of their aptitude and qualifications, there should be substituted a policy of arbitrarily rotating the men through the different duties irrespective of their qualifications, the result would be a decrease in safe navigation, and an increase in accidents.

A study of the debates in Congress, while this bill was pending, lends support to our contention that the

act was passed for the purpose of regulating the *hours of work,* and to prevent men from being overworked.

In an explanatory article by the legislative committee of the Seamen's Union, it was stated:

> "* * * The features of the bill are, briefly stated, as follows:
>
> 1. Establishing 'watch and watch' at sea and prohibiting unnecessary work on Sundays and holidays in port, thus insuring *the amount of rest* necessary to the highest state of efficiency. * * *
>
> Andrew Furuseth,
> Wm. H. Frazier,
> Walter MacArthur,
> Legislative Committee."
>
> (Cong. Rec., Part 12, appen. 735—62nd Cong. —2nd Session.)

In speaking in the House of Representatives in favor of this provision of the bill, Mr. Post stated:

> "If we can * * * establish 'watch' for watch' so as to furnish requisite rest, etc."
>
> (Cong. Rec., Vol. 48, Part 9—p. 9433.)

These proceedings indicate, exactly as we have contended, and as held by the District Court and the Circuit Court of Appeals, that the purpose of Section 2 of the act was to prevent overwork.

PETITIONERS' CLAIMS ARE MERE PRETEXTS.

Since the amendment of the Seamen's Act in 1915, abolishing arrest for desertion, there is no remedy left to the shipowner except to declare a forfeiture

of wages. As a result, under the wage conditions which prevailed at the time of the voyage involved in this action, the crews of vessels arriving on the Pacific Coast used every possible excuse to obtain their discharge under some pretext or other which would not involve a forfeiture of their wages. The master testified as follows:

> "Q. Did you have any trouble in holding your crew?
>
> A. I never could hold them. They always, more or less of them, every trip, all the time, as soon as we got out here, wanted to be paid off. They came out as passengers, to get their passage out. If they could not get paid off,—if they could not get a certificate from a doctor of being incapacitated for duty, they drew half of the money they had coming to them and would quit,—leave. They had been doing that right along.
>
> Q. I understand. And when these men demanded that they be paid off, claiming you had violated the law, they had previously demanded that they be paid off, without any excuse whatsoever?
>
> A. Yes, sir; they asked to be paid off first thing of all; and I told them I would not pay them off. I am not positive whether both of them, but I am positive one of them wanted a certificate for the doctor,—wanted to see a doctor; and I think both of them did."
>
> (Record, pp. 34, 35.)

The record shows beyond any doubt that the claim by petitioners that they should be discharged because some other members of the crew, not engaged in the sailing or management of the ship, were not divided equally into watches, was a mere pretext, adopted

after the petitioners had tried, without success to obtain their discharge upon other grounds. Both the District Court and the Circuit Court of Appeals so found. (Record, pp. 44, 62.)

There was an attempt to show that the ship was operated part of the time at night without a lookout. The testimony on this point is very, very weak, and is contradicted by the master of the vessel. (Record, pp. 38, 39, 40.) It is not material, in any event, for the statute relied upon by the petitioners does not contain any provision for the posting of a lookout.

NO DECISIONS ON THE POINT.

We have been unable to find any decisions on the point involved in this case. The contention is so strained and unwarranted that it is not strange that it should not have arisen before. The statute is clear and there is no basis for the construction urged by the petitioners. To quote from the opinion of the District Court:

> "The libellants contend that under this section there must be an equal division of the crew into the different watches. That is, if the sailors are divided into two watches, one-half must be assigned to each watch; if into three watches, one-third to each watch, and so forth, as nearly as may be. If this is the proper construction of the act it is conceded that the master failed to comply therewith. But in our opinion the primary object of the section was to fix the hours of service and to prevent overwork, not to prescribe the number of seamen on each watch. If one-half or one-third of the crew must be assigned to duty at

night, it is quite apparent that a majority of those thus assigned will have little or nothing to do. Of course, if such is the requirement of the law, the courts have nothing to say, but we fail to find anything in the statute calling for that construction. If Congress intended to thus limit the discretion of the master in the management of the vessel and the disposition of the crew it would have employed direct and specific language to that end. The libelants were, therefore, not entitled to their discharge, and the libel is dismissed."

(Record, pp. 44, 45.)

The Circuit Court of Appeals, in affirming the District Court, stated:

"Libelants, who were quartermasters, do not claim that they were on duty more than one watch out of every three, or that they were required to work more than eight hours out of every twenty-four. The complaint of these two quartermasters, the libelants herein, is not that they have suffered any unequal treatment in the labor required of them, or that they were not on duty successively, but that other members of the crew did not stand the regular wheel or lookout watch; that they were on duty only eight hours during the daytime and off during the night. No complaint is made of unequal treatment by the other men who were not engaged in the actual sailing or management of the vessel, but were employed in painting and other ordinary shipwork during the day and were allowed off duty during the night. The complaint is that because these other men engaged in ordinary service were not divided into equal watches and required to do duty in watches at night, the two quartermasters claim they had the right to be discharged.

"The Court below held that the primary object of the statute was to fix the hours of service

and to prevent overwork, not to prescribe the number of seamen on each watch, and that the libelants were, therefore, not entitled to their discharge.

"The duty of the quartermaster is to steer the ship, and obviously only one man at a time can be engaged in that duty. The addition of more men to a night watch would not relieve the quartermasters of their duties. They are selected for their qualification to steer the ship, and the safety of the ship often depends upon their qualification to perform that duty. The purpose of Congress was obviously to provide for the safety of the ship in the selection of qualified quartermasters and men for the lookout, and also to prevent overwork. The division of the men into watches as disclosed by the evidence in this case was not contrary to the statute.

"The decree of the District Court is affirmed."

(Record, pp. 63-5, inc.)

It is submitted that the decrees of the District Court and Circuit Court of Appeals should be affirmed.

Dated, San Francisco,
October 5, 1925.

Respectfully submitted,

Peter S. Carter,

LOUIS T. HENGSTLER,
FREDERICK W. DORR,
Proctors for Respondent.

SUPREME COURT OF THE UNITED STATES.

No. 224.—October Term, 1925.

William O'Hara and Sven Tjersland, Petitioners, *vs.* Luckenbach Steamship Company.	On a Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[January 4, 1926.]

Mr. Justice Sutherland delivered the opinion of the Court.

Petitioners, libellants below, quit the service of the steamship company and sought to recover their earned wages on the ground of a violation of § 2 of the Seamen's Act of March 4, 1915, c. 153, 38 Stat. 1164, copied in the margin.* Omitting the various pro-

*Sec. 2. That in all merchant vessels of the United States of more than one hundred tons gross, excepting those navigating rivers, harbors, bays, or sounds exclusively, the sailors shall, while at sea, be divided into at least two, and the firemen, oilers, and water tenders into at least three watches, which shall be kept on duty successively for the performance of ordinary work incident to the sailing and management of the vessel. The seamen shall not be shipped to work alternately in the fireroom and on deck, nor shall those shipped for deck duty be required to work in the fireroom, or vice versa; but these provisions shall not limit either the authority of the master or other officer or the obedience of the seamen when, in the judgment of the master or other officer, the whole or any part of the crew are needed for the maneuvering of the vessel or the performance of work necessary for the safety of the vessel or her cargo, or for the saving of life aboard other vessels in jeopardy, or when in port or at sea from requiring the whole or any part of the crew to participate in the performance of fire, lifeboat, and other drills. While such vessel is in a safe harbor no seaman shall be required to do any unnecessary work on Sundays or the following-named days: New Year's Day, the Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day, but this shall not prevent the dispatch of a vessel on regular schedule or when ready to proceed on her voyage. And at all times while such vessel is in a safe harbor, nine hours, inclusive of the anchor watch, shall constitute a day's work. Whenever the master of any vessel shall fail to comply with this section, the seamen shall be entitled to discharge from such vessel and to receive the wages earned. But this section shall not apply to fishing or whaling vessels, or yachts.

visions with which we are not here concerned, the pertinent requirement of that section is that "the sailors shall, while at sea, be divided into at least two, and the firemen, oilers, and water tenders into at least three watches, which shall be kept on duty successively for the performance of ordinary work incident to the sailing and management of the vessel." For a failure on the part of the master to comply with this, among other provisions of the section, the seamen are entitled to a discharge and to receive the wages earned. The failure complained of was that the sailors were not divided into watches of equal or approximately equal numbers, as, it was insisted, the statute contemplated.

The company was the owner of the steamship "Lewis Luckenbach," a vessel of 14,400 tons burden, upon which libellants were hired as sailors for a voyage from New York to Pacific ports and return to some port north of Cape Hatteras on the Atlantic. Altogether, there were thirteen sailors on board, three of whom, including libellants, were assigned as quartermasters. On the voyage and while at sea, these sailors were not equally divided into watches. Three watches were on duty, each consisting of one quartermaster and one able seaman, the remaining seven sailors being kept at day work only. The district court dismissed the libel and this was affirmed by the court of appeals. 1 Fed. (2nd) 923. Both courts were of opinion that the primary object of the statutory provision was to fix hours of service so as to prevent overwork, not to prescribe the number of seamen on each watch. The district court thought that this conception of the law was borne out by the consideration that, if one-half or one-third of the crew must be assigned to duty at night, a majority of them would have little or nothing to do. The court of appeals seemed to think that the purpose of Congress to provide for the safety of the ship was satisfied rather in the selection of qualified quartermasters and men for the lookout than in the equality of the watches. With these views we are unable to agree.

The general purpose of the Seamen's Act is not only to safeguard the welfare of the seamen as workmen, but, as set forth in the title, also "to promote safety at sea." The Act as a whole shows very clearly that, while hours of work and proper periods of rest were regarded as considerations of primary concern while the vessel is in a safe harbor, these considerations must yield, as they have always

yielded, to the paramount necessity of safety while the ship is at sea. And, as indicating that the provision under review was not intended primarily as a regulation of working hours, it is significant that it does not apply to the entire crew, but requires a division into watches only of the sailors and the firemen, oilers and water tenders. It is natural to suppose that if the purpose of Congress was chiefly to regulate hours of work, something would have been said about the service, while at sea, of those employed in the steward's department as well. And not only is the division confined to those of the crew engaged in the mechanics of conducting the ship on her voyage, but the imperative requirement is that the watches into which they are divided "shall be kept on duty successively," that is to say by turns, so that one watch must come on as another goes off. The evident purpose was to compel a division of the men for duty on deck and in the fireroom and continuity of service, to the end that in those departments the ship should at all times be actively manned with equal efficiency. It probably is true, as said below that to construe the statute as compelling numerical equality of the watches will result, so far as the sailors are concerned, in the performance of less work on deck at night. And it may be noted, in that connection, that in the hearings before the House committee having charge of the bill, it was objected on behalf of the shipowners, obviously, as the context shows, upon the theory that such equality was in fact contemplated by the provision, that, "on cargo steamers, it would be an injustice to keep a lot of men on watch, all night, and have nothing for them to do." House Hearings on S. 136, Vol. 104, pt. 2, p. 5, Feb. 24, 1914. But the provision, fundamentally, is a measure of precaution against those perilous and often unexpected emergencies of the sea when only immediate and wakeful readiness for action may avert disaster or determine the issue between life and death; its effect as a regulator of working conditions is a matter of subordinate intent. A consideration of other safety provisions of the Act will help to make this clear.

Among them, the Act (§ 13, p. 1169) provides that not less than seventy-five per centum of the crew in each department shall be able to understand any order given by the officers of such vessel; and that a certain percentage of her deck crew shall be of a rating not less than able seaman—meaning, except on the Great Lakes,

a seaman nineteen years of age or upwards who has had at least three years' service on deck at sea or on the Great Lakes. It also contains elaborate provisions (§ 14, pp. 1170-1184) for the equipment of ocean-going vessels with life-saving appliances, and, among other things, requires (p. 1180) that "At no moment on its voyage may any ocean-cargo steam vessel of the United States have on board a total number of persons greater than that for whom accommodation is provided in the lifeboats on board." None of these provisions is of much if any concern except as a precaution against the unusual crises of the sea.

As a ship pursues her way in security, perhaps for many years, these requirements for safety appliances and for able seamen may seem over-exacting, and the language test, as well as a division of the watches into equal numbers, needlessly burdensome. But it is apparent from the hearings and debates, that Congress looked forward to the possibility of other disasters like those of the *Titanic* and the *Volturno*, (the facts of which had been subjected to inquiry by its committees) where, in the one, the lack of lifeboats probably caused the loss of many lives, although in a quiet sea, and where, in the other, lifeboats lowered in a great storm were engulfed, it was thought by some, from the absence of the skill of able seamen in launching them; or like that of the *City of Rio de Janeiro* (*In re Pacific Mail S. S. Co.*, 130 Fed. 76), which sank with many of its lifeboats unlaunched because the crew of Chinese sailors were unable to understand the language in which the orders of their officers were given. The following from the opinion in that case (pp. 82-83) is peculiarly apposite:

"It is, as was said by Judge Hawley in Re Meyer (D. C.) 74 Fed. 855, 'the duty of the owners of a steamer carrying goods and passengers, not only to provide a seaworthy vessel, but they must also provide the vessel with a crew adequate in number, and competent for their duty with reference to all the exigencies of the intended route'; not merely competent for the ordinary duties of an uneventful voyage, but for any exigency that is likely to happen, . . . The case shows that the City of Rio de Janeiro left the port of Honolulu, on the voyage under consideration, with a crew of 84 Chinamen, officered by white men. The officers could not speak the language of the Chinese, and but two of the latter—the boatswain and chief fireman—could understand that of the officers. Consequently, the orders of the officers had to be communicated either through the boatswain or chief fireman, or by signs and signals. So far as appears, that seemed to have worked well enough on the

voyage in question, until the ship came to grief, and there arose the necessity for quick and energetic action in the darkness. In that emergency the crew was wholly inefficient and incompetent, as the sad results proved. The boats were in separate places on the ship. The sailors could not understand the language in which the orders of the officers in command of the respective boats had to be given. It was too dark for them to see signs (if signs could have been intelligibly given), and only one of the two Chinese who spoke English appears to have known anything about the lowering of a boat; and there had been no drill of the crew in the matter of lowering them. Under such circumstances it is not surprising that but three of the boats were lowered, one of which was successfully launched by the efforts of Officer Coghlan and the ship's carpenter, another of which was swamped by one of the Chinese crew letting the after fall down with a run, and the third of which was lowered so slowly that it was swamped as the ship went down. We have no hesitation in holding that the ship was insufficiently manned, for the reason that the sailors were unable to understand and execute the orders made imperative by the exigency that unhappily arose, and resulted so disastrously to life, as well as to property."

See also R. S. § 4463, amended c. 72, 40 Stat. 548; *Flint & P. M. R. Co.* v. *Marine Ins. Co.*, 71 Fed. 210, 219; *Northern Commercial Co.* v. *Lindblom*, 162 Fed. 250, 254.

It is not unreasonable to conclude that Congress determined that each of the watches, like the crew as a whole, should be "adequate in number," competent and in a state of readiness "for any exigency that is likely to happen"—such as a collision, the striking of the ship upon a reef of rocks or an iceberg, the sudden breaking out of fire, and other happenings of like disastrous tendency—and to this end meant to provide for successive and continuous watches to be constituted in numbers as nearly equal as the sum of the whole number would permit.

In this conclusion we are fortified by the consideration that the legislation deals with seamen and the merchant marine and, consequently, the phrase "divided into . . . watches" is to be given the meaning which it had acquired in the language and usages of the trade to which the Act relates, in accordance with the rule stated in *Unwin* v. *Hanson*, [1891] L. R. 2 Q. B. 115, 119: "If the Act is one passed with reference to a particular trade, business, or transaction, and words are used which everybody conversant with that trade, business, or transaction, knows and understands to have

a particular meaning in it, then the words are to be construed as having that particular meaning, though it may differ from the common or ordinary meaning of the words." In the understanding of the sailor, a division into "watches," as applied to the personnel of the ship, connotes a division as nearly equal as possible. "At sea a ship's crew is commonly divided into two watches; the Master, 2nd Mate, 4th Mate (if any) with one-half of the seamen and boys, forming the so-called 'Starboard Watch'; after four hours these are relieved by the Chief-mate, and the 3rd Officer (if any) and the other half of the men, who form the 'Port Watch'." Paasch, Marine Encyclopedia, 300, 301. R. H. Dana, Jr., in his "Dictionary of Sea Terms," p. 129, defines the term "watch" as: "Also, a certain portion of a ship's company, appointed to stand a given length of time. In the merchant service all hands are divided into two watches, larboard and starboard, with a mate to command each." And, at page 133, he says: "The men are divided as equally as possible, with reference to their qualities as able seamen, ordinary seamen, or boys, (as all green hands are called, whatever their age may be;) but if the number is unequal, the larboard watch has the odd one, since the chief mate does not go aloft and do other duty in his watch, as the second mate does in his." The point is emphasized by the use of the distinctive terms "anchor watch" and "sea watch", the former meaning the lookout entrusted to one or two men when the vessel is at anchor and the latter being used "when one half of a ships crew is on duty" at sea. Paasch, 301.

It is true that this meaning had its origin in the customs of the sea before the advent of steam, but there is nothing to show that it has now a different meaning; and, with nothing in the context and no evidential circumstances to suggest the contrary, we fairly may assume that the use of the technical terms of the trade to which the statute relates imports their technical meaning.

Decree reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.